

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

IN THE MATTER OF:  
Phase II Distribution  
of the 2004-2009  
Cable Royalty Funds  
: Docket No.  
: 2012-6  
: CRB CD  
: 2004-09  
: (Phase II)

IN THE MATTER OF:  
Phase II Distribution  
of the 1999-2009  
Satellite Royalty Funds  
: Docket No.  
: 2012-7  
: CRB SD  
: 1999-2009  
: (Phase II)

Volume 4

Thursday,  
December 11, 2014  
Room 1M-403  
Madison Building  
Library of Congress  
101 Independence Avenue, SE  
Washington, DC  
The above-entitled matter came on for  
hearing, pursuant to notice, at 9:15 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT  
THE HONORABLE JESSE FEDER  
THE HONORABLE DAVID R. STRICKLER  
Copyright Royalty Judges

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P-R-O-C-E-E-D-I-N-G-S

(9:17 a.m.)

JUDGE BARRETT: Good morning. Please be seated. We were going to take Ms. Saunders first thing this morning. Is that correct, counsel?

MS. PLOWNICK: Yes, Your Honor.

MR. BOYDSTON: Your Honor, if I may very quickly, a housekeeping issue. Do you recall, not yesterday but the day before, we had sort of introduced Exhibit 122 but we had to make the copies of it. We did, but again I handed those around at the beginning of yesterday. I forgot to move that they be admitted into evidence.

Again, they were documents that were produced in discovery and parties had them in discovery beforehand, but we hadn't moved them into evidence.

JUDGE BARRETT: I was intending that counsel have overnight to look at them, but any objections?

6

8

MS. PLOWNICK: We don't have an objection.

MR. MACLEAN: No objection, Your Honor.

JUDGE BARRETT: Okay. IPG Exhibit 122 is admitted.

(Whereupon, the above-referred to document was received into evidence as IPG Exhibit No. 122.)

MR. BOYDSTON: Thank you, Your Honor.

MS. PLOWNICK: MPAA calls Jane Saunders to the stand.

JUDGE BARRETT: Ms. Saunders, you remain under oath.

MS. PLOWNICK: Good morning, Ms. Saunders. For the record, I'm Lucy Plownick, counsel for MPAA.

Ms. Saunders, this is the second time you've been called to the stand, or I guess the third time you've been called to the stand in this proceeding. What's the purpose of your testimony this time?

THE WITNESS: This time the purpose of my testimony is to address some of the issues raised in IPG's rebuttal as well as various of the parts of Mr. Galaz's testimony that have been given so far in this proceeding.

DIRECT EXAMINATION

BY MS. PLOWNICK:

Q Now Ms. Saunders, yesterday you testified about MPAA Exhibit 341 which was admitted, and that contains copies of some MPAA's certifications for Pintage.

You also identified MPAA Exhibits 337 and 339 through 340, and 342 through 345 as MPAA certifications for some of its claimants.

A That's correct.

Q Can you take a look at those documents? They've been premarked.

A Yes, I'm sorry. You say 341?

Q 341, which is already admitted.

A Right.

Q And then MPAA Exhibits 337, 339 through 340.

A Hang on. Hang on. Sorry. 339 and 340, yes.

Q And 342 through 345.

A Yes. Got it. Yes.

Q I believe you testified yesterday that these are MPAA certifications?

A Yes, they are.

Q Are these all copies of MPAA's business records?

A They are.

Q And were all of these documents produced in discovery to IPG?

A Yes.

MS. PLOWNICK: So Your Honor, I move to admit MPAA Exhibits 337, 339 through 340, and 342 through 345.

MR. BOYDSTON: Your Honor, may I voice the witness?

JUDGE BARRETT: You may.

MR. BOYDSTON: Thank you, Your Honor.

Ms. Saunders, let's look at one of these, I think the first in line, if I'm correct,



9

1 Ms. Plovnick, is 337. Is that right?

2 MS. PLOVNIK: That's right.

3 MR. BOYDSTON: And the questions I'm  
4 asking apply to all of them, but I want to look  
5 at one just so that we're all on the same page.

6 MS. PLOVNIK: Sure.

7 MR. BOYDSTON: Now my understanding is  
8 looking at 337, if you could turn to the second  
9 and third pages which list the programs.

10 JUDGE BARRETT: I'm sorry. These are  
11 marked as restricted.

12 MR. BOYDSTON: Oh, thank you, Your  
13 Honor.

14 JUDGE BARRETT: For those of you in  
15 the courtroom who have not signed the  
16 confidentiality agreement, if you could wait out  
17 in the anteroom please so we can conclude this  
18 portion of the testimony.

19 MR. BOYDSTON: May I continue?

20 JUDGE BARRETT: You may.

21 VOIR DIRE EXAMINATION

22 MR. BOYDSTON: Ms. Saunders, so these

11

1 and the others were created, right?

2 A That is my understanding, yes.

3 Q So these were not -- and now were  
4 these used when you created the appendices to  
5 your declaration in May or around May of this  
6 year?

7 A Remind me please what my declaration  
8 in May of this year was.

9 Q That your declaration, and I thought  
10 it was May. If I'm wrong, I apologize. You have  
11 a declaration which you attached Appendices A and  
12 B --

13 A Oh, my testimony. My testimony.

14 Q Yes, your testimony.

15 A I'm so sorry. Yes, I believe that,  
16 well, the certification reports, as I have said  
17 or testified prior, are the basis for Exhibits A  
18 and B that are appended to my testimony in both  
19 the cable and the satellite proceedings.

20 Q And when you say they're the basis for  
21 it, is what you're saying is that they were used  
22 to create those documents?

10

1 lists, I think you testified yesterday very  
2 clearly, these came from Mr. Whitt, correct?

3 THE WITNESS: Yes.

4 BY MR. BOYDSTON:

5 Q I guess, technically speaking, well,  
6 no, I guess all the ones that we're concerned  
7 with here would have been Mr. Whitt since he was  
8 doing these through 2009 and maybe a little  
9 beyond.

10 A Actually it would have been the  
11 accounting firm Resnick that prepared these  
12 certifications reports for us in 2009. But it  
13 was a similar arrangement, all are outside  
14 vendors.

15 Q Okay, I understand. But before that  
16 it was ET Processing which is Mr. Whitt's  
17 company?

18 A For many years, yes.

19 Q Yes, okay. Now when these were  
20 created they were brought over, you said, in  
21 paper format and then manually put together with  
22 the certifications, and that's how this exhibit

12

1 A The Exhibit A and B only, well, with  
2 respect to the lists of titles that are in the  
3 exhibits, Exhibit B, I think it is, it would have  
4 been all the titles except those that have been,  
5 as you can see here on the allocations, crossed  
6 out. That title would not be in mine, or should  
7 not be.

8 Q Okay. And what about, so these were  
9 not used to create Exhibit A or --

10 A Oh, I'm so sorry. With respect to  
11 claimants, yes, the certification report would --  
12 MS. PLOVNIK: Your Honor, could he  
13 direct -- you know, this is already in the  
14 record. Her written testimony has been admitted,  
15 and I think he's confusing Ms. Saunders about  
16 which part of it he's asking her.

17 MR. BOYDSTON: Sorry, I'm not trying  
18 to.

19 JUDGE BARRETT: Well, is this voir  
20 dire on the admissibility of these certifications  
21 or is this cross examination, Mr. Boydston?

22 MR. BOYDSTON: Your Honor, I'm trying

13

1 to understand where these come from and what  
2 they've been used for.  
3 MS. PLOWNICK: Your Honor, I --  
4 JUDGE BARRETT: That's asked and  
5 answered.  
6 MR. BOYDSTON: Okay.  
7 MS. PLOWNICK: We did this at length  
8 yesterday.  
9 JUDGE BARRETT: I said it was asked  
10 and answered, Ms. Plovnick.  
11 Any other voir dire for the witness  
12 with regard to these exhibits?  
13 MR. BOYDSTON: Yes. I can obtain that  
14 right now, Your Honor.  
15 In focusing on Exhibit 337, the  
16 program lists, they came from Mr. Whitt and his  
17 database and then after that from the other  
18 entity?  
19 THE WITNESS: You keep using that  
20 word, Mr. Boydston. You clearly have a  
21 partiality to the word database. And I will say  
22 it more clearly than I did yesterday. Data is

14

1 not a database. You can have lots of data, it is  
2 not a database.  
3 I do not know if Mr. Whitt had a  
4 database. I do know that he had data and based  
5 on that data he generated these lists.  
6 MR. BOYDSTON: Fair enough.  
7 Nothing further, Your Honor. Oh,  
8 well, I do have -- that's the end of the voir  
9 dire. I do renew the same objection that these  
10 are created from information that we asked for  
11 that was not given to us, and the witness has  
12 testified that the information was passed on to  
13 counsel prior to us asking for it, and so I renew  
14 my objection.  
15 JUDGE BARRETT: Overruled.  
16 MR. BOYDSTON: Your Honor, to make it  
17 clear for the record, MPAA was trying to admit  
18 not just this document of course but all the ones  
19 that she stated. My objection was as to all  
20 stated, and I understand you're overruling it to  
21 all stated.  
22 JUDGE BARRETT: Correct. Thank you,

15

1 Mr. Boydston. So Exhibits 337, 339 through '40,  
2 and 342 through '45 are admitted.  
3 (Whereupon, the above-referred to  
4 documents were received into evidence  
5 as MPAA Exhibit Nos. 337, 339-340 and  
6 342-345.)  
7 MS. PLOWNICK: Thank you, Your Honor.  
8 Now Ms. Saunders, you heard Mr. Galaz  
9 testify earlier in this proceeding about IPG  
10 receiving payment for international CMOs such as  
11 AGICOA and CCC?  
12 THE WITNESS: Yes.  
13 DIRECT EXAMINATION (continued)  
14 BY MS. PLOWNICK:  
15 Q Do you recall Mr. Galaz's testimony  
16 about that?  
17 A I certainly do.  
18 Q And are you involved with AGICOA and  
19 CCC?  
20 A Yes. As I have previously testified,  
21 I am directly responsible for CCC operations. I  
22 am the chairman of the CCC board. MPAA actually

16

1 founded CCC more than, it's more than two decades  
2 ago but close enough.  
3 They were a co-founder of AGICOA in  
4 the late '80s. I have worked within AGICOA as a  
5 member of the identification committee. I am  
6 currently on the executive committee or the  
7 executive board.  
8 I'm also on the AGICOA finance  
9 committee and I'm intimately involved with the  
10 operations of both CMOs. Familiar with, I should  
11 say. I don't have that much time in my day, but  
12 I am familiar with.  
13 Q So I direct your attention to IPG  
14 Exhibit 104, if you can find that please. That  
15 would be in one of IPG's exhibit binders. And  
16 this is already admitted. Let me know when you  
17 have it.  
18 A What's the number again?  
19 Q It is IPG Exhibit 104.  
20 (Off the record discussion)  
21 MS. PLOWNICK: Oh yes, this exhibit is  
22 not restricted, I don't believe.



17

1 JUDGE BARRETT: Thank you.  
 2 Ms. Saunders.  
 3 (Off the record discussion)  
 4 MS. PLOVNICK: Okay, so you have TPG  
 5 Exhibit 104?  
 6 THE WITNESS: I do. I have IPG 104,  
 7 yes.  
 8 BY MS. PLOVNICK:  
 9 Q And do you remember Mr. Galaz  
 10 testifying about this document?  
 11 A Yes, I do.  
 12 Q And based on your own personal  
 13 knowledge from your work with the CCC and AGICOA  
 14 was Mr. Galaz's characterization accurate?  
 15 A No, it was not.  
 16 Q Well, can you explain?  
 17 A Mr. Galaz implied, or actually, I  
 18 think, stated that the payment or the receipt by  
 19 IPG retransmission royalty payments from both the  
 20 CCC and AGICOA was somehow probative or  
 21 indicative of IPG's entitlement to represent  
 22 certain claimants on whose behalf he had received

18

1 these monies.  
 2 And I can assure you that in no way is  
 3 that correct. The receipt of retransmission  
 4 royalties from a CMO in a given country is not  
 5 only not probative, it is in no way indicative of  
 6 the right to receive retransmission royalties in  
 7 an entirely different country such as the United  
 8 States.  
 9 Q And what country is the CCC in?  
 10 A Canada.  
 11 Q And where does AGICOA operate?  
 12 A AGICOA operates around the world. But  
 13 one has to, specifically when registering claims  
 14 for titles, indicate for which countries one that  
 15 holds the rights and is able to be paid. And I  
 16 do not recall any testimony by IPG that the  
 17 royalties they had received from AGICOA came from  
 18 the United States.  
 19 I also happen to know that AGICOA does  
 20 not claim, currently, any U.S. retransmission  
 21 royalties through, they don't claim any  
 22 retransmission royalties in the United States.

19

1 Q And is IPG identified on those  
 2 documents as receiving the funds?  
 3 A Well, that's a good question. I do  
 4 not, I don't see, frankly, any reference to IPG.  
 5 I see a list of titles. And again simply the  
 6 compensation by AGICOA or sending some royalty or  
 7 remunerations for titles again is in no way  
 8 indicative or probative, certainly not probative,  
 9 of rights that one may hold elsewhere.  
 10 In fact, MPAA in this proceeding  
 11 represents, and in respect of our administration  
 12 of U.S. royalties, represents an enormous number  
 13 of claimants that in the United States for  
 14 purposes of claiming U.S. royalties that are  
 15 represented by agents such as Compact, Flatage or  
 16 IFTA that are represented by those agents within  
 17 AGICOA.  
 18 JUDGE STRICKLER: If I may interrupt,  
 19 Ms. Saunders, you said a moment ago that AGICOA  
 20 does not now seek retransmission royalties in the  
 21 United States. How about during the years in  
 22 question in this proceeding?

20

1 THE WITNESS: To my recollection, Your  
 2 Honor, is that AGICOA filed a claim one time for  
 3 U.S. retransmission royalties. They filed it  
 4 with the MPAA. We worked extremely hard to find  
 5 a single incidence of a retransmitted title that  
 6 AGICOA claimants could claim in the United  
 7 States.  
 8 Now I can't tell you for certainty  
 9 that they asserted that claim in respect of every  
 10 single program they represented. They may have  
 11 taken a representative sample.  
 12 But the fact is, when you're dealing  
 13 in a world of distant signal compensation or  
 14 compensation for distant signal retransmission of  
 15 programs that are broadcast at least in the cable  
 16 fund on non-network stations, that scope is very,  
 17 very small.  
 18 And to the represented claimants by  
 19 AGICOA on whose behalf they were filing, because  
 20 as I've said before, AGICOA, well, perhaps I  
 21 didn't make this clear.  
 22 AGICOA doesn't, for example, have the

21

1 right to claim retransmission royalties in the  
2 United States for many of its claimants because  
3 those claimants claim directly with MPAA. The  
4 reason for that is why would you pay two  
5 administration fees for royalties you can claim  
6 yourself directly?

7 So many of AGICOA claimants, at least  
8 U.S. producers have affiliated directly with  
9 MPAA. They claim royalties in the U.S. directly  
10 through MPAA. They don't need AGICOA for that.

11 So AGICOA is left with a basket of  
12 claimants that are largely European and whose  
13 licensing deals in the United States are such  
14 that they may go on cable-only channels, they may  
15 be licensed to network channels, but we could not  
16 find a way to pay them.

17 And I think the year that they filed  
18 that I recall most particularly, and I cannot  
19 tell you which of the royalty years, if it was  
20 one of these or a later one, I think they might  
21 have been entitled to \$700.

22 And they concluded and they informed

22

1 me that they would no longer claim retransmission  
2 royalties in the United States because it really  
3 wasn't worth the time and the effort.

4 JUDGE STRICKLER: Thank you.

5 MS. PLOWNICK: And so Ms. Saunders,  
6 let me direct your attention to what's already  
7 been admitted as MPAA Exhibit 336.

8 THE WITNESS: Hold on.

9 MS. PLOWNICK: That's in the orange  
10 binder so we can put the red binder away.

11 THE WITNESS:

12 BY MS. PLOWNICK:

13 Q So were these certifications executed  
14 by ABC Family?

15 A Correct. Formerly known as Fox  
16 Family, yes.

17 Q Formerly known as Fox Family. So  
18 during Mr. Galaz's testimony he talked about the  
19 title of Dragon Ball Z, and do you see that title  
20 on these certifications?

21 A I certainly do.

22 Q Okay. So now let me direct your

23

1 attention to what's been premarked as MPAA  
2 Exhibit 306 and that's in the other orange  
3 binder.

4 A Okay, got it.

5 Q Okay, so what is that document?

6 A This is the Federal Register, a copy  
7 of a decision in the Federal Register, Volume 66  
8 Number 247 dated December 26, 2001, and it's an  
9 opinion or an order from the Library of Congress  
10 in Docket Number 2000-2 CARP CD 93-97 regarding  
11 distribution of 1993, '94, '95, '96 and '97 cable  
12 royalty funds.

13 Q Thank you, Ms. Saunders. Can you  
14 please turn to Page 66435 of that decision?

15 A Yes, ma'am. Got it.

16 MS. PLOWNICK: Your Honor, I'm going  
17 to move this in. I don't know if I need a little  
18 bit more foundation to link this to the title  
19 Dragon Ball Z. I'm going to do that in one more  
20 question, but if you want me to move it now I'm  
21 happy to do that.

22 JUDGE BARRETT: Well, it's a published

24

1 record. I don't know how much foundation you  
2 need to lay for that.

3 Mr. Boydston, any objection?

4 MR. BOYDSTON: No, Your Honor.

5 JUDGE BARRETT: Mr. MacLean?

6 MR. MACLEAN: No, Your Honor.

7 MR. BOYDSTON: Your Honor, I just  
8 would like to note it was vacated, but it is  
9 public record.

10 JUDGE BARRETT: You'll have a chance  
11 to talk about that, Mr. Boydston. 306 is  
12 admitted.

13 (Whereupon, the above-referred to  
14 document was received into evidence as  
15 MPAA's Exhibit No. 306.)

16 MS. PLOWNICK: Thank you, Your Honor.

17 So now Ms. Saunders, if you could look  
18 at Page 66435 of admitted MPAA Exhibit 306. And  
19 if you look in the right hand column near the top  
20 of the page, subsection D over there. Do you see  
21 that?

22 THE WITNESS: I do.



25

1 BY MS. PLOWNICK:  
 2 Q Do you see the title, Dragon Ball Z,  
 3 discussed?  
 4 A I do.  
 5 Q All right. So Ms. Saunders, if you'd  
 6 please read into the record the second full  
 7 sentence there which starts with the words, "The  
 8 CRB determined."  
 9 A "The CRB determined that Fox Family  
 10 Worldwide, not Funimation Productions, was the  
 11 proper syndicator for Dragon Ball Z and therefore  
 12 IFG was not entitled to a distribution for this  
 13 program."  
 14 Q Okay, and I think you previously  
 15 testified that ABC Family was formerly known as  
 16 Fox Family Worldwide?  
 17 A I did. It's on the certification  
 18 report under their signature.  
 19 Q So what do you conclude from comparing  
 20 MPAA Exhibit 306 and 336?  
 21 A That Fox Family is -- I'm sorry, hold  
 22 on. I want to make sure I get the right name

26

1 here. That ABC Family Worldwide, formerly known  
 2 as Fox Family Worldwide, is the proper claimant  
 3 for Dragon Ball Z.  
 4 Q Now I'm going to have you look at  
 5 what's already been admitted as IFG Exhibit 22  
 6 which is in another IFG binder over there.  
 7 (OFF the record discussion)  
 8 MS. PLOWNICK: So Ms. Saunders, what  
 9 is IFG Exhibit 22?  
 10 THE WITNESS: This appears to be or  
 11 this is a copy of a page that's from the  
 12 copyright office records, the public catalog. It  
 13 is a page pertaining to Dragon Ball Z, a  
 14 particular episode that I will not attempt to  
 15 pronounce, and it appears to be an application  
 16 for copyright.  
 17 BY MS. PLOWNICK:  
 18 Q Is this a search of the public  
 19 catalog?  
 20 A It's a search of the public catalog.  
 21 That is correct.  
 22 Q So does this document tell you who

27

1 controls the right to collect retransmission  
 2 royalties for Dragon Ball Z?  
 3 A In no way, shape or form.  
 4 Q Why not?  
 5 A Because when programs are copyrighted  
 6 they are subsequently licensed.  
 7 MR. BOYDSTON: Your Honor. I object.  
 8 This calls for the expert opinion. She's not  
 9 been qualified as an expert in that regard.  
 10 JUDGE BARRETT: It's not calling for  
 11 expert opinion, but foundation is insufficient in  
 12 any event.  
 13 Ms. Plonick, ask some more questions.  
 14 MS. PLOWNICK: Ms. Saunders, based on  
 15 your personal knowledge, based on your experience  
 16 at MPAA and also with the other lines of work  
 17 that you do, do you know if a public search of  
 18 copyright records would dictate who is the proper  
 19 claimant for retransmission royalties?  
 20 THE WITNESS: In my experience it  
 21 would not. It would be probative of the  
 22 possibility that the claimant or the applicant

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1 for copyright and even the owner of copyright may  
 2 have the right to claim retransmission rights,  
 3 but retransmission rights are a separate  
 4 exclusive right that are fully assignable as a  
 5 matter of contract law and frequently are  
 6 assignable, or assigned, excuse me.  
 7 So the fact that one might be a  
 8 copyright owner, unless one can also demonstrate  
 9 if challenged that you have currently the rights  
 10 to license the title and have retained  
 11 retransmission rights in any license you may have  
 12 entered into with a licensee -- I got myself a  
 13 little turned around in there.  
 14 But I know what I'm saying is unless  
 15 you could demonstrate that the mere holding of  
 16 copyright is insufficient.  
 17 BY MS. PLOWNICK:  
 18 Q How do you know that, Ms. Saunders?  
 19 A Because I deal with conflicting  
 20 claims. One of my primary jobs within the MPAA  
 21 as well as the CCC is to deal with conflicting  
 22 claims among claimants.

29

1 I also, in my capacity, in my role at  
2 the MPAA, from time to time I see excerpts of  
3 licensing agreements between claimants, including  
4 our studios, and I know for a certainty that  
5 retransmission rights are, I don't want to say  
6 frequently, but they can be and are granted.

7 It's often to a broadcaster. That is  
8 a very normal and standard business practice when  
9 licenses are executed with broadcasters, for  
10 example. They can be granted to syndicators.  
11 They can be granted to distributors. It's a  
12 negotiated item.

13 Q All right. Thank you, Ms. Saunders.  
14 So has MPAA ever encountered a situation where  
15 two parties claimed to work with the same name or  
16 a similar title and the two works were really  
17 different?

18 A Yes, it happens all the time,  
19 particularly with movies, titles with movies are  
20 often the same.

21 Q All right. So let me direct your  
22 attention to Exhibit 337, which has already been

30

1 admitted. This is a certification for Allied  
2 Communications. And do see the title, Victim of  
3 Love, on this certification?

4 JUDGE BARRETT: That's one I missed --

5 MS. PLOWNICK: Oh, I'm sorry. It is  
6 337.

7 COURT REPORTER: I'm sorry, Your  
8 Honor. Could you repeat that?

9 JUDGE BARRETT: I could. I could even  
10 use the microphone. I missed the exhibit number.

11 337, is that correct?

12 MS. PLOWNICK: 337 is the correct  
13 exhibit.

14 JUDGE BARRETT: Thank you.

15 THE WITNESS: And I do see a title,  
16 Victim of Love. Yes, it is on the next to the  
17 last page of the title attachment to that  
18 certification.

19 MS. PLOWNICK: And that was a  
20 certification for Allied Communications for 2000?

21 THE WITNESS: Yes, it is. For 2000,  
22 yes.

31

1 BY MS. PLOWNICK:

2 Q Okay. So now let me direct your  
3 attention to MPAA Exhibit 305 which has already  
4 been admitted and it's in the other binder.

5 JUDGE STRICKLER: What Bates Number  
6 page is Victim of Love?

7 MS. PLOWNICK: I'm sorry?

8 JUDGE STRICKLER: The Bates, I'll ask  
9 counsel. Do you have it?

10 MS. PLOWNICK: I don't actually have  
11 it.

12 JUDGE STRICKLER: You said next to the  
13 last page.

14 THE WITNESS: I have it. It's Bates  
15 Stamp S as in Sam, 04266, and there's a hole  
16 punched through the last number. But it might be  
17 a 6 because the next one is 7.

18 MS. PLOWNICK: And it's Exhibit 337.

19 And oh, I'm sorry. I'm not really  
20 going to get into the contents of it, but --

21 MR. BOYDSTON: I'm sorry. We're on  
22 Exhibit 335. Is that correct?

32

1 MS. PLOWNICK: 305.

2 MR. BOYDSTON: Excuse me. Thank you.

3 MS. PLOWNICK: Okay. So Ms. Saunders,  
4 do you have MPAA Exhibit 305?

5 THE WITNESS: Yes, I do.

6 BY MS. PLOWNICK:

7 Q All right, so can you please turn to  
8 transcript pages 1897 and 1898, the first portion  
9 of that exhibit.

10 A Yes, I have them.

11 Q Who's testifying in this transcript  
12 excerpt?

13 A This is Marsha Kessler, the famous  
14 Marsha Kessler.

15 Q And what topic is she addressing?

16 A She is addressing a program entitled,  
17 Victim of Love.

18 Q And if you take a look at Page 1898 or  
19 1898, what does Ms. Kessler explain on that page?

20 A Ms. Kessler explains that as I have  
21 just stated, titles are often the same and  
22 therefore there can be confusion among claimants



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1 as to which title is actually being claimed.

2 She refers to the title, Victim of  
3 Love, saying that it is a movie and that there  
4 are actually two movies called "Victim of Love"  
5 that are in no way related to one another. She  
6 goes on to make an entertaining comparison  
7 between Gone With the Wind and Wizard of Oz.

8 Q All right. So now do you see  
9 references made to MPAA Exhibit 14 in the  
10 transcript?

11 A Yes, exactly. Yes, I do, so at the  
12 very bottom of 1888.

13 Q So if you flip to the back of MPAA  
14 Exhibit 305, MPAA Exhibit 14 should be there.  
15 And do you see that document?

16 A Hang on a second. Oh, okay, yes. I  
17 see MPAA Rebuttal Exhibit 14, yes.

18 Q Okay. Could you flip to the page that  
19 has the title information about Victim of Love?

20 A Yes. It appears to be an IMDB extract  
21 or a copy of an IMDB page, and it shows there are  
22 two works entitled "Victim of Love" that are

34

1 listed one after the other.

2 The first is Victim of Love, which is  
3 a 94-minute, 1992 drama or telefilm featuring  
4 Pierce Brosnan about a deadly love triangle  
5 between a psychiatrist and a patient and a man.

6 The next one is Victim of Love, the  
7 Shannon Mohr, M-O-H-R, story, which is a 120-  
8 minute telefilm directed by, starring no one I've  
9 ever heard of and directed by John Cosgrove.

10 Q So one of those is related to Cosgrove  
11 and one is not?

12 A Yes. One is directed by Cosgrove and  
13 the other is directed by Jerry London.

14 Q Is MPAA claiming the Cosgrove title?

15 A No, we are not. My understanding is  
16 we are claiming the Victim of Love, the Pierce  
17 Brosnan, sorry, directed by Jerry London title.

18 Q So was this issue regarding Victim of  
19 Love or the difference between the two Victim of  
20 Loves, is that previously litigated between MPAA  
21 and IFC?

22 A I believe so, since the beginning of

35

1 Exhibit 305 is an extract of the CRE hearing in  
2 the matter of distribution of '93, '94, '95, '96  
3 and '97 cable royalties.

4 MR. BOYDSTON: Your Honor, I'll move  
5 to strike just because it doesn't appear she has  
6 personal knowledge of that. She's simply relying  
7 on this document and she's testified that she  
8 wasn't involved in these matters in her present  
9 position in the time in question.

10 JUDGE BARRETT: Sustained. The  
11 document's in evidence.

12 MS. PLOWNICK: So Ms. Saunders, when  
13 Mr. Galaz testified he talked a lot about MPAA's  
14 representation of agents. Does MPAA represent  
15 agents?

16 THE WITNESS: Yes, we do.

17 BY MS. PLOWNICK:

18 Q And does MPAA also represent the  
19 copyright owners that those agents represent?

20 A Yes, we do.

21 Q So how does that work?

22 A Our certification form specifically

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1 indicates, and you can look at any one of them to  
2 see it, that we represent or will accept claims  
3 on behalf of owners, agents of owners or  
4 entities, the representative of an entity that's  
5 entitled to claim the royalties.

6 Q Does MPAA's representation agreement  
7 also address --

8 A Yes, it does.

9 Q -- agents?

10 A Our representation agreement has a  
11 specific section for representation. I think I  
12 testified to this on Monday.

13 Q Yes, you did. So does MPAA routinely  
14 ask claimants to provide documentation supporting  
15 their representation of entities that they list  
16 on joint claims or agent claims?

17 A No. No, we do not. Not for the  
18 agents that we currently represent. We have that  
19 prerogative in our representation agreement, but  
20 thus far the agents that we have represented, and  
21 I can mention a few that have been talked about  
22 in this proceeding, Screenrights, Flatage, EGEDA,

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1 IFTA and Compact, those agents are all very well  
2 known to be personally and professionally, I work  
3 with them all the time. I know claimants that  
4 they represent.

5 I serve on the board of collecting  
6 societies with many of them. MPAA itself, might  
7 not me personally, but MPAA colleagues are on the  
8 board of EGEDA. So I am very familiar with those  
9 entities. I have met, as I said, personally many  
10 of the claimants they represent, and -- I thought  
11 I had another point but I'll just leave it at  
12 that.

13 Q So you're very familiar from your own  
14 personal work and experience --

15 A Yes, yes.

16 Q -- with many of these agents?

17 A Yes. What I was going to say is I  
18 have seen, for Screenrights and EGEDA in  
19 particular and I believe we also have in some of  
20 the exhibits that have been put before this  
21 court, exemplars of representation agreements by  
22 Pintage, but I am quite familiar with the

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1 membership agreements that EGEDA has with its  
2 members as well as with those that Screenrights  
3 has with their members.

4 And -- go ahead.

5 Q Is that from your personal experience  
6 working with --

7 A Yes, of course.

8 Q All right. And you say you're  
9 familiar with all of those documents. All right.

10 A Yes.

11 Q Okay, let me -- are you aware that --  
12 you stated earlier you reviewed IPG's written  
13 rebuttal statement in this proceeding. Is that  
14 correct?

15 A Yes.

16 Q You're aware that IPG challenged the  
17 authority of MPAA to represent certain MPAA-  
18 represented copyright owners in that filing?

19 A Represented copyright owners who were  
20 themselves represented by agents.

21 Q So what, if any, action did you take  
22 in response to IPG's --

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1 A Oh, I directed my counsel to inquire  
2 with each of those agents to substantiate or tell  
3 us, talk to us about the basis to confirm the  
4 representation of underlying copyright owners and  
5 to provide us some explanation particularly with  
6 regard to the claimants and the works that IPG  
7 challenged.

8 JUDGE BARRETT: Ms. Saunders, I'm just  
9 going to remind you not to begin your answer  
10 until the question is finished.

11 THE WITNESS: Sorry.

12 MS. PLOVNIK: Yes, and I'll try to do  
13 a better job of that too. I'm talking a little  
14 slow, I guess. So to your knowledge did your  
15 attorneys do as you requested?

16 THE WITNESS: Yes, they --

17 MR. ROYDSTON: Objection, Your Honor.  
18 Calls for hearsay, and it's really double  
19 hearsay. I understand she's saying she asked her  
20 attorneys to do something, technically that's  
21 hearsay but I wasn't going to object to that.

22 Now she's asking what the attorneys

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1 did and what they heard, and that is at least  
2 double hearsay if not triple. So objection on  
3 hearsay.

4 JUDGE BARRETT: Sustained.

5 You can re-form the question, Ms.  
6 Plovnick.

7 MS. PLOVNIK: All right.

8 Do you know if your attorneys took any  
9 action in response to --

10 THE WITNESS: Well, what I do know is  
11 that I received a series of letters from these,  
12 many of these claimants directed to me personally  
13 that began to arrive in my office sometime during  
14 the month of November.

15 BY MS. PLOVNIK:

16 Q All right, so let me direct your  
17 attention to MPAA Exhibit 346.

18 A Yes.

19 Q Have you seen this before?

20 A Yes, I have.

21 Q And what is it?

22 A This is a letter to me sent by Marcel.



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1 Hooqenberk of Fintage. Marcel and I have worked  
2 together for many years, and he describes or  
3 responds to, or actually he expresses great  
4 surprise that IPG would challenge --

5 Q Ms. Saunders.

6 A Oh, I'm sorry.

7 Q Before you get into the substance  
8 there, so is Fintage a claimant addressed in  
9 IPG's written rebuttal statement?

10 A It is.

11 Q And is MPAA Exhibit 346 a true and  
12 correct copy of the correspondence that you  
13 received from Marcel Hooqenberk of Fintage?

14 A Yes, it is.

15 MS. PLOWNICK: All right. So I move  
16 to admit MPAA Exhibit 346.

17 MR. BOYDSTON: Your Honor, I'll  
18 object. It's hearsay. I also know it is not a  
19 declaration. It's not been signed under penalty  
20 of perjury and therefore it differs in  
21 substantial regard from a legal standpoint from  
22 the declarations that we are regularly admitting

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1 in these proceedings. That's my objection.

2 MS. PLOWNICK: Your Honor, this is a  
3 business record of Ms. Saunders' and she is  
4 testifying here that she received this in her  
5 normal course of business.

6 JUDGE BARRETT: Well, for what  
7 purposes is it being offered? For the truth of  
8 the matter or for the fact that it was received?

9 MS. PLOWNICK: It is being offered for  
10 the fact that she received it and that she  
11 requested her claimants to send her  
12 documentation, and it was sent. So it's being  
13 admitted as an MPAA business record.

14 So also, Your Honor, we have an  
15 understanding in these proceedings based on the  
16 regulations that hearsay is permitted. So --

17 JUDGE BARRETT: May be permitted.

18 MS. PLOWNICK: May be permitted, Your  
19 Honor. So we believe that hearsay is admissible  
20 in these proceedings. We've seen many other  
21 documents admitted here in this correspondence  
22 with IPG's claimants that were admitted as IPG

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1 business records. And so we would ask that it be  
2 admitted on that basis.

3 JUDGE BARRETT: You need to lay the  
4 foundation then for a business record.

5 MS. PLOWNICK: Okay. Yes, Your Honor.

6 MR. BOYDSTON: I was just going to say  
7 the business record exception would simply lay a  
8 foundation. It would not address the hearsay  
9 matter.

10 JUDGE BARRETT: Well, let's get the  
11 foundation.

12 MS. PLOWNICK: Okay.

13 So Ms. Saunders, is this a business,  
14 did you receive this document for a normal course  
15 of business at MPAA?

16 THE WITNESS: Yes.

17 BY MS. PLOWNICK:

18 Q And is this a document that you would  
19 maintain as a business record at MPAA?

20 A Yes.

21 Q And it's in fact a letter that you  
22 personally received at your office?

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1 A Yes. It is a letter that I more or  
2 less I requested.

3 Q And, but it is maintained in your  
4 office?

5 A Yes.

6 Q And you, please just describe the  
7 chain of custody of how that letter was --

8 A Well, as I said, I asked my counsel to  
9 confirm MPAA's representation of --

10 Q No, for this letter. So it was you  
11 received it then?

12 A Oh. I received it and I tendered it  
13 to my counsel.

14 Q And your counsel then included it --

15 A Yes, they have included it, I  
16 understand, as part of our rebuttal, no? Or --

17 MR. BOYDSTON: I'll object. That  
18 calls for speculation. But I will believe the  
19 point on the business record. I think she's  
20 established that. I'll stipulate the business  
21 record. That doesn't address the hearsay though.

22 MS. PLOWNICK: And our response is

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1 that hearsay is permitted.  
 2 MR. MACLEAN: Your Honor.  
 3 JUDGE BARRETT: Mr. Maclean.  
 4 MR. MACLEAN: May I voir dire on this  
 5 exhibit?  
 6 JUDGE BARRETT: You may. Might as  
 7 well.  
 8 VOIR DIRE EXAMINATION  
 9 MR. MACLEAN: Ms. Saunders, was this  
 10 record received and kept in the regular course of  
 11 MPAA's business?  
 12 THE WITNESS: Yes, it was.  
 13 MR. BOYDSTON: Your Honor, asked and  
 14 answered and stipulated to, and we're tight on  
 15 time.  
 16 MR. MACLEAN: Your Honor, based on  
 17 that I have no objection to this record as a  
 18 business record which is an exception to the  
 19 hearsay rule even under the federal rules of  
 20 evidence.  
 21 MR. BOYDSTON: It is in regard to  
 22 foundation, it is not regarding to hearsay.

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1 JUDGE BARRETT: Just a minute please.  
 2 Thank you. I will now read.  
 3 MR. BOYDSTON: I beg your pardon?  
 4 JUDGE BARRETT: I said I will now  
 5 read.  
 6 MS. PLOVNIK: Your Honor, before you  
 7 make a ruling, I also wanted to add two points.  
 8 First, in the 1997 Cable Phase II proceeding, I  
 9 know from in review of that record that there  
 10 were letters that were admitted as business  
 11 records in that proceeding from claimants.  
 12 JUDGE BARRETT: Ms. Plovnick, if you  
 13 want my ruling --  
 14 MS. PLOVNIK: I'm sorry.  
 15 MR. BOYDSTON: Your Honor, if I could  
 16 just address that comment --  
 17 JUDGE BARRETT: No, you may not. I'm  
 18 striking it because I've already heard everything  
 19 I need to hear on the 803 of the whatever  
 20 exception to the hearsay rule. Your objection's  
 21 overruled. The exhibit is admitted.  
 22 (Whereupon, the above-referred to

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1 document was received into evidence as  
 2 MPAA Exhibit No. 346.)  
 3 MS. PLOVNIK: Thank you, Your Honor.  
 4 MR. BOYDSTON: Your Honor, just for  
 5 the record, may I just point out that this was  
 6 prepared in response to these things and it could  
 7 have been made into a declaration but was not.  
 8 JUDGE BARRETT: You've made your point  
 9 on the record, Mr. Boydston. Thank you.  
 10 MS. PLOVNIK: Ms. Saunders, if you  
 11 look at MPAA Exhibit 346, where is Fintage based?  
 12 THE WITNESS: In the Netherlands.  
 13 DIRECT EXAMINATION (continued)  
 14 BY MS. PLOVNIK:  
 15 Q And is Fintage an individual claimant  
 16 or an agent claimant?  
 17 A They are an agent claimant.  
 18 Q All right. So if you look at MPAA  
 19 Exhibit 341, this exhibit contains Fintage  
 20 certifications. In what capacity did Fintage,  
 21 and they may also say in the letter which is MPAA  
 22 Exhibit 347 that, do you know what capacity

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1 Fintage represents its claimants?  
 2 A Yes, I do. And when I said agent I am  
 3 merely using MPAA's vernacular. We consider them  
 4 an agent even though they execute all their  
 5 certifications as the representative of the  
 6 assignee of the underlying retransmission rights  
 7 and that is the basis on which they have  
 8 maintained their claims in regards to or the  
 9 representation of each of these entities that  
 10 were challenged by IPG, Bell Phillip, Televisa,  
 11 TV Azteca and EGEDA.  
 12 Q So in MPAA Exhibit 346, what issues  
 13 does Mr. Hoogenberk address in his letter?  
 14 A Well, he first addresses where it  
 15 mentions his great surprise that IPG would  
 16 challenge the representation by Fintage of the  
 17 entities I just mentioned, because, and attaches  
 18 to the correspondence, rather, a copy of a joint  
 19 notice that was sent to Tanya Sanders of the  
 20 copyright office from Fintage and IPG expressly  
 21 confirming, I guess, based on a settlement  
 22 agreement, because heretofore Fintage and IPG



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1 apparently collaborated in some respect in terms  
2 of asserting claims.

3 MR. BOYDSTON: Your Honor, I want to  
4 object on the same grounds that were objections  
5 raised for, that Your Honor directed us that when  
6 we have a declaration in the record already the  
7 witness should not, simply recite it or go into  
8 it. So for the same reasons, I think the record  
9 speaks for itself now that it's admitted.

10 JUDGE BARRETT: Sustained.

11 MS. PLOWNICK: We have questions.

12 JUDGE BARRETT: Is there questions,  
13 Mr. Plovnick?

14 MS. PLOWNICK: Is the documentation  
15 you just referenced attached to the letter?

16 THE WITNESS: It is.

17 BY MS. PLOWNICK:

18 Q And is there other documentation  
19 attached to the letter?

20 A Yes, there are two lists of claimant  
21 names. Attached is Exhibit 1-2, the joint  
22 letter that indicate which entities will be

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1 represented by Pintage and which will be  
2 represented by, I guess, ICG is another dba for  
3 IPG -- boy, that was a lot of acronyms -- with  
4 their separate list of entities and I think IPG  
5 represents.

6 Q So Ms. Saunders --

7 JUDGE BARRETT: I'm sorry. It's ACG.

8 THE WITNESS: ACG. Oh, excuse me,  
9 thank you.

10 MS. PLOWNICK: So, and Mr. Hoogenberk,  
11 there are other attachments to his letter?

12 THE WITNESS: Oh yes. I'm so sorry,  
13 yes. I only got to the first couple.

14 BY MS. PLOWNICK:

15 Q So what are they?

16 A He has attached exemplars of Pintage's  
17 representation agreements.

18 Q For which claimants, I guess.

19 A Oh, all right. Hang on. You have to  
20 give me a second here. Bell Phillips regarding  
21 DEL Distribution.

22 MR. BOYDSTON: Your Honor, I'm going

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1 to object to the attachments because that's a  
2 second level of hearsay. And so the letter is  
3 one level, this is now a completely second level  
4 of hearsay. I object on that ground.

5 JUDGE BARRETT: Mr. Boydston, Exhibit  
6 3 to the Pintage House letter is a joint venture  
7 representation agreement, the joint venture being  
8 between Pintage and MSG. I believe we admitted  
9 that yesterday at your request.

10 MR. BOYDSTON: You're right, and I  
11 have no objection to that. But these others I do  
12 object to because they're second and I think a  
13 third level of hearsay.

14 JUDGE BARRETT: Overruled. Go ahead.

15 MS. PLOWNICK: So Ms. Saunders, I'm  
16 not going to belabor the point as this document  
17 is already in the record, but do you see in there  
18 agreements for Televisa, TV Azteca --

19 THE WITNESS: Yes, TV Azteca, EGEDA  
20 and some others. Yes, I do.

21 BY MS. PLOWNICK:

22 Q And some of the documentation in there

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1 is actually between some Pintage claims and IPG,  
2 I believe, especially with regard to Bell  
3 Phillips?

4 A There is voluminous correspondence in  
5 here and if you give me --

6 Q So anyway, can you confirm that there  
7 is correspondence in there which is directed at  
8 IPG?

9 A Oh yes, I can. I see it now, yes.

10 Q And were those documents ever produced  
11 to MPAA in discovery?

12 A To my understanding they were not.

13 Q All right.

14 MR. BOYDSTON: Your Honor, I'm going  
15 to object additionally to these documents on the  
16 grounds that they were never produced in  
17 discovery by the MPAA.

18 Now obviously I'm not referring to IPG  
19 documents, but I am referring of course to the  
20 non-IPG documents which they never produced in  
21 discovery despite our requests for all evidence  
22 of agreements with the owners of copyright. And

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1 they were directed, first, in that regard of --  
 2 JUDGE BARRETT: Mr. Boydston, the  
 3 legal basis of the objection is generally  
 4 sufficient without the narrative.  
 5 MR. BOYDSTON: Thank you, Your Honor.  
 6 JUDGE BARRETT: Ms. Plovnick, how do  
 7 you respond to the objection?  
 8 MS. PLOVNIK: Well, I respond that  
 9 MPAA first received these records on the date of  
 10 the Pintage letter which was in November.  
 11 THE WITNESS: November 21st.  
 12 MS. PLOVNIK: November 21st of 2014,  
 13 so, and they were not in MPAA's possession. And  
 14 as soon as, and we received them in response to  
 15 IPG, and as part of our effort to respond to  
 16 IPG's written rebuttal statement.  
 17 So there would have been no, we  
 18 wouldn't have had them and so we wouldn't have  
 19 produced a document we didn't have. And I don't  
 20 think it would have been an obligation for us to  
 21 go, after the judges ruled that, on this as well  
 22 in the July 30 order that MPAA was not required

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1 to go to its agents further to obtain further  
 2 documentation unless IPG brought a further motion  
 3 or made a further showing.  
 4 MR. BOYDSTON: Your Honor, if that's  
 5 the case then I withdraw my objection. If they  
 6 didn't have it time and only got it now, that's a  
 7 reasonable explanation.  
 8 JUDGE BARRETT: Thank you.  
 9 Was it offered? Is that why we had  
 10 the objection?  
 11 MS. PLOVNIK: No, Your Honor. It's  
 12 already admitted.  
 13 JUDGE BARRETT: Oh, okay. Thank you.  
 14 Yes, it was. Go ahead.  
 15 MS. PLOVNIK: All right.  
 16 All right, so Ms. Saunders, let's talk  
 17 for a minute about EGEDA. Does MPAA represent  
 18 EGEDA?  
 19 THE WITNESS: We represent EGEDA in  
 20 these proceedings through Pintage.  
 21 BY MS. PLOVNIK:  
 22 Q All right. Are you familiar with

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1 EGEDA?  
 2 A Yes, I am.  
 3 Q And how are you familiar with it?  
 4 A I don't want to belabor the point. I  
 5 went into great detail about my relationship and  
 6 association with EGEDA and my understanding and  
 7 familiarity, knowledge of their membership  
 8 agreements.  
 9 I can also tell the court if it's of  
 10 interest that under Spanish law EGEDA is  
 11 authorized by the Ministry of Culture to  
 12 represent all the rights of, all the remuneration  
 13 rights of all producers in Spain.  
 14 It is a function of something called  
 15 the Spanish national implementation in their  
 16 copyright act of the Cable and Satellite  
 17 Directive.  
 18 So EGEDA is presumed to be by law in  
 19 Spain the representative of Spanish producers.  
 20 Furthermore, in EGEDA's membership agreements  
 21 which, and the descriptions of these can be found  
 22 on EGEDA's website, admittedly in Spanish but

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1 it's there, the EGEDA membership terms provide  
 2 that EGEDA is entitled to collect -- or sorry,  
 3 not entitled -- mandated, authorized by its  
 4 members, any member to claim remuneration  
 5 including for retransmission around the world.  
 6 MS. PLOVNIK: So Ms. Saunders, I'm  
 7 going to now show you what's been premarked as  
 8 MPAA Exhibit 359.  
 9 (Off the record discussion)  
 10 MS. PLOVNIK: And so Ms. Saunders,  
 11 what is MPAA Exhibit 359?  
 12 MR. BOYDSTON: Can we get it first?  
 13 MS. PLOVNIK: Yes. The clerk allowed  
 14 us to do all of it as one.  
 15 So I'm sure you guys are getting  
 16 copies for the judges as well.  
 17 So while we're doing that, so Ms.  
 18 Saunders, what is MPAA Exhibit 359, or what's  
 19 been premarked as MPAA Exhibit 359?  
 20 THE WITNESS: These are claims  
 21 submitted by Pintage with the Copyright Royalty  
 22 Board in respect of cable and satellite



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1 retransmission royalties. There are two from  
2 2007, one from 2008, and this one. Two from 2007  
3 and two from 2008.

4 BY MS. PLOVNIK:

5 Q And if you look, is it 2006 or 2008?

6 A I said '08.

7 Q So, but for what royalty years were  
8 they for?

9 A Oh, I'm sorry. Well, let's see.

10 2006, which of course would have been filed in  
11 2007, right, of course. And then 2006, and all  
12 right, filing's 2006, filing's 2007. Sorry.

13 Q So you have cable claims and satellite  
14 claims for Fintage for 2006 --

15 A And for 2007.

16 Q -- and for 2007?

17 A Yes, that's correct.

18 Q And does MPAA maintain these as  
19 business records?

20 A Yes, we certainly would.

21 Q Were these documents produced to IPG  
22 in discovery?

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1 A In fact we require these in our  
2 representation unit. I'm sorry?

3 Q So MPAA maintains these documents as  
4 business records?

5 A Yes.

6 Q And were they produced to IPG in  
7 discovery?

8 A Well, they're Bates stamped so I'm  
9 going to say yes.

10 MS. PLOVNIK: All right, so I move to  
11 admit MPAA Exhibit 359.

12 MR. BOYDSTON: Your Honor, I'll  
13 object. They were produced in discovery but they  
14 weren't attached as exhibits to the MPAA  
15 rebuttal.

16 MS. PLOVNIK: Your Honor, this is our  
17 rebuttal to IPG, so --

18 JUDGE BARRETT: Overruled.

19 MR. BOYDSTON: Yes, why were they not  
20 in our exhibit book is the question?

21 JUDGE BARRETT: They're rebuttal as I  
22 understand.

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1 MS. PLOVNIK: They were rebuttal  
2 exhibits.

3 MR. BOYDSTON: Okay, can we have an  
4 offer of proof as to what they're rebutting?

5 JUDGE BARRETT: I think we're good  
6 there, and if we don't I will reconsider, okay?

7 MR. BOYDSTON: Thank you, Your Honor.

8 JUDGE BARRETT: Go ahead, Ms.  
9 Plovnick.

10 MS. PLOVNIK: So I move to admit  
11 these exhibits.

12 JUDGE BARRETT: They are admitted  
13 without prejudice.

14 Whereupon, the above-referred to  
15 document was received into evidence as  
16 MPAA Exhibit No. 359.

17 MS. PLOVNIK: All right. So Ms.  
18 Saunders, if you can look at MPAA Exhibit 359,  
19 do you know if, from looking at these exhibits,  
20 if Fintage listed EGEDA claimants on its claims?

21 THE WITNESS: It appears that Fintage  
22 represented, or sorry, listed on these claims the

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1 individual names --

2 JUDGE BARRETT: I'm sorry, what page?

3 THE WITNESS: I apologize, Your Honor.  
4 This is, I'm now looking specifically at the  
5 cable filing for 2006 which was filed July 30th  
6 at 10:56 in the morning.

7 And there's attached to this claim a  
8 voluminous list of claimants on whose behalf  
9 Fintage is claiming. It does not specifically  
10 say EGEDA. However, I can assure the court that  
11 EGEDA is featured here or its members are  
12 featured because the address of EGEDA, a location  
13 I have been to many times, is Luis -- I'm not  
14 even going to try.

15 The address, the physical address of  
16 EGEDA is listed for each of the claimants that  
17 begin with 12 Penguins. Let's see, that would be  
18 on Bates stamped Page C 02179, about halfway down  
19 when the lines go from very small to a little bit  
20 bigger. All of those claimants are listed  
21 individually by name, and the address given for  
22 them is the physical address of the offices of

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1 EGEDA in Madrid.  
 2 MS. PLOVNIK: And is the same true for  
 3 the, so you were looking at the 2006 --  
 4 THE WITNESS: '06 cable.  
 5 BY MS. PLOVNIK:  
 6 Q -- cable. And is the same true for  
 7 the 2006 satellite, 2007 cable and 2007  
 8 satellite?  
 9 A Yes. I see Luis Bunuel addresses in  
 10 Madrid, throughout the 2007 cable, starting as of  
 11 Bates stamped Page C 02447, and then, sorry, that  
 12 was 2007 cable.  
 13 And 2006 satellite, I see EGEDA's  
 14 address again starting on Bates stamped Page S  
 15 02654. And for 2007 satellite, I see EGEDA's  
 16 address again as of Bates stamped Page S 02917.  
 17 Q So Fintage filed claims on behalf of  
 18 EGEDA's individual claimants --  
 19 A Correct.  
 20 Q -- for 2006 and 2007 cable and  
 21 satellite?  
 22 A Yes.

1 the correspondence that you received --  
 2 JUDGE STRICKLER: Which document are  
 3 you looking at?  
 4 MS. PLOVNIK: MPAA Exhibit 347.  
 5 JUDGE STRICKLER: Thank you.  
 6 THE WITNESS: Yes, it is a true and  
 7 correct copy.  
 8 MS. PLOVNIK: So I move to admit MPAA  
 9 Exhibit 347.  
 10 MR. BOYDSTON: Objection, Your Honor.  
 11 Same objection that this is not a declaration and  
 12 it is hearsay. And I also object that the  
 13 attachments that are two constitute an additional  
 14 level of hearsay.  
 15 JUDGE BARRETT: Overruled. 347 is  
 16 admitted.  
 17 [Whereupon, the above-referred to  
 18 document was received into evidence as  
 19 MPAA Exhibit No. 347.]  
 20 MR. BOYDSTON: And also, Your Honor,  
 21 I object that it was not produced in discovery.  
 22 JUDGE BARRETT: Likewise overruled.

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1 Q So what do you conclude from that?  
 2 A That Fintage was the authorized  
 3 claimant for EGEDA; that EGEDA is the  
 4 representative of the claimants that were  
 5 individually named in each of the 2006 and 2007  
 6 filings by Fintage.  
 7 Q Right. So let's turn to MPAA Exhibit  
 8 347.  
 9 A Okay.  
 10 Q Have you seen this before?  
 11 A I have. This is a letter I received  
 12 from Screenrights on November 24th, 2014.  
 13 Q And is this a document that you said  
 14 -- you received it. Did you receive it in your  
 15 capacity at MPAA?  
 16 A Yes, it is addressed to me as the SVP  
 17 of Rights Management Policy, yes.  
 18 Q And is this a business record that is  
 19 maintained in the regular course of business at  
 20 MPAA?  
 21 A It is.  
 22 Q And is this a true and correct copy of

1 MS. PLOVNIK: So Ms. Saunders, what  
 2 issues, well, I don't want to have you read the  
 3 document, but can you please just describe what  
 4 is addressed in this letter without really, I  
 5 don't want you to read it but just give me --  
 6 THE WITNESS: Okay. Screenrights  
 7 confirms to me that they are claiming within as  
 8 an MPAA claimant as an agent not as an owner,  
 9 property owner, and they also address what they  
 10 say is confusion between works claimed by IPG and  
 11 by MPAA on behalf of Screenrights, specifically  
 12 of programs called From the Heart, and also the  
 13 Outdoorsman that I believe we've discussed or Mr.  
 14 Galaz discussed, earlier. They indicate that the  
 15 IPG title claim in respect of or on behalf of  
 16 Lawrence Well Syndication --  
 17 MR. BOYDSTON: Your Honor, objection.  
 18 This is getting to the point of reciting the  
 19 document.  
 20 JUDGE BARRETT: Sustained. Ask  
 21 another question, Ms. Plovnick.  
 22 MS. PLOVNIK: Oh, I believe my



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1 counsel just asked was 347 admitted, Your Honor?  
 2 I just need to clarify.  
 3 JUDGE BARRETT: Yes.  
 4 MS. PLOWNICK: All right, thank you.  
 5 So was there other attachments to MPAA  
 6 347 to the letter?  
 7 THE WITNESS: I'm sorry?  
 8 BY MS. PLOWNICK:  
 9 Q Are there attachments to the letter in  
 10 MPAA Exhibit 347?  
 11 A There's a Screenrights membership form  
 12 which confirms Screenrights' authority to claim  
 13 retransmission royalties on behalf of its  
 14 claimants.  
 15 Q And does this address --  
 16 A And I believe these forms --  
 17 Q I'm sorry, let me ask a question. Do  
 18 these forms address the titles that are at issue  
 19 in the letter?  
 20 A Yes, they do.  
 21 Q All right, so let's move on to what's  
 22 been premarked as MPAA Exhibit 348. Have you

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1 seen this document before?  
 2 A I have. This is a letter I received  
 3 from CBS Broadcasting dated November 21st, 2014.  
 4 Q And is this correspondence that you  
 5 received in your official capacity at MPAA?  
 6 A Yes.  
 7 Q And this is something you received  
 8 personally?  
 9 A Yes, it is.  
 10 Q And is this a document that is  
 11 maintained as an MPAA business record --  
 12 A It is.  
 13 Q -- once it was received by you?  
 14 A It is.  
 15 MS. PLOWNICK: So I move to admit MPAA  
 16 Exhibit 348 into evidence.  
 17 MR. BOYDSTON: Your Honor, same  
 18 objection.  
 19 JUDGE BARRETT: Noted and overruled.  
 20 Thank you, Mr. Boydston.  
 21 (Whereupon, the above-referred to  
 22 document was received into evidence as

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1 MPAA Exhibit Number 348.)  
 2 MS. PLOWNICK: All right, so Ms.  
 3 Saunders, now that MPAA Exhibit 348 has been  
 4 admitted, can you please, without reading it,  
 5 just tell us what did you learn from this letter?  
 6 THE WITNESS: CBS, Mr. Kryle, informed  
 7 me that CBS was claiming two works based on  
 8 licensing agreements and he attached redacted  
 9 copies of those agreements to his correspondence  
 10 to indicate that CBS in fact had received or been  
 11 assigned the right to receive retransmission  
 12 royalties in the United States.  
 13 BY MS. PLOWNICK:  
 14 Q And the attachments to Mr. --  
 15 A For those works.  
 16 Q -- to the CBS letter from, I believe  
 17 it's from Mr. Kryle, yes, from Sanford Kryle --  
 18 A Sandy Kryle, yes. Sanford Kryle, I  
 19 believe.  
 20 Q Yes, those cover the titles that are  
 21 addressed in his cover letter?  
 22 A Exactly. They do.

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1 Q All right. Let's move to MPAA Exhibit  
 2 349.  
 3 MR. BOYDSTON: Same objection, Your  
 4 Honor.  
 5 JUDGE BARRETT: Thank you, Mr.  
 6 Boydston. Noted, overruled.  
 7 MS. PLOWNICK: All right, so I move to  
 8 admit the Exhibit 349.  
 9 JUDGE BARRETT: 349's admitted.  
 10 (Whereupon, the above-referred to  
 11 document was received into evidence as  
 12 MPAA Exhibit No. 349.)  
 13 MS. PLOWNICK: Okay. So Ms. Saunders,  
 14 well, I mean I guess I'm going to do the, just  
 15 350 through 352. These are all going to be the  
 16 same.  
 17 So should I just give you, do you want  
 18 me just to go ahead and offer them at, I mean if  
 19 we're going to have the same objection it might  
 20 be faster for the court. It's up to --  
 21 JUDGE BARRETT: Mr. Boydston, do you  
 22 repeat your three objections with regard to 350

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1 through 352?

2 MR. BOYSTON: Yes, Your Honor, and  
3 let me just clarify them. We object on the  
4 grounds, as long as we're doing it collectively,  
5 we object on the grounds that these are not  
6 declarations and they're hearsay. We also object  
7 to their attachments which are a second level of  
8 hearsay.

9 We object to the extent that some of  
10 these are not rebuttal. I realize they're being  
11 offered as rebuttal. To the extent they were not  
12 rebuttal, then they should have been produced in  
13 discovery.

14 And we object on the grounds that they  
15 were not kept and prepared in the normal course  
16 of business. They were prepared in response to  
17 our rebuttal and therefore they're not  
18 traditional business records.

19 JUDGE BARRETT: And earlier you lost  
20 or rejected on the basis that they had not been  
21 produced in discovery. Is that -

22 MR. BOYSTON: I think I said that,

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1 but yes.

2 JUDGE BARRETT: Okay. Thank you. Any  
3 objections, Mr. MacLean?

4 MR. MACLEAN: No objection, and I had  
5 actually thought that there was a stipulation of  
6 these core business records but no objection.

7 MS. PLOVNIK: Your Honor, he did  
8 stipulate that they were business records.

9 JUDGE BARRETT: 350 through 352  
10 inclusive are admitted.

11 MR. BOYSTON: And just for the  
12 record, I only stipulated on the one exhibit. I  
13 am not stipulating further.

14 JUDGE BARRETT: Okay. Thank you.

15 MS. PLOVNIK: Ms. Saunders, just to  
16 - just to make the record clear, all of these  
17 documents that we've been discussing in MPAA  
18 Exhibits - MPAA Exhibits 348 through 352, are all  
19 those documents MPAA business records?

20 MS. SAUNDERS: Yes, they are.

21 MS. PLOVNIK: All right. So may I  
22 have one moment to confer with my client? All

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1 right.

2 So going back to MPAA Exhibit 349,  
3 just on a very high level, I do not want you to  
4 read the letter or the documents - what did you  
5 learn from MPAA Exhibit 349?

6 MS. SAUNDERS: That Fox substantiated  
7 its claims to an AFI work involving Barbra  
8 Streisand, as I recall, and attached a license -  
9 we had the redacted license agreement and a quite  
10 extensively highlighted licensing agreement in  
11 that letter in support of its claim.

12 MS. PLOVNIK: And moving to MPAA  
13 Exhibit 350, what did you learn from that  
14 document?

15 MS. SAUNDERS: That our joint  
16 claimant's or agent's compact and IFTA were  
17 confirming their right to claim the work  
18 challenged by IPG, I believe the work is  
19 "Presumed Guilty" and they indicated that - as I  
20 recall that they had agreed to share royalties.

21 They both claimed this work for  
22 particular royalty years and they had made a deal

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1 between them as to who would get the royalties.  
2 But they attached support to their letter, as I  
3 recall, of their claims.

4 MS. PLOVNIK: Do they distinguish -  
5 is this another situation where there are two  
6 titles for a similar thing?

7 MS. SAUNDERS: Yes. It appears to be  
8 because they've attached - they describe the work  
9 in the letter that they are claiming and assert  
10 that it is different than the work that IPG is  
11 claiming.

12 MS. PLOVNIK: And let's look to the  
13 last - the last page of that. So is this a  
14 search of the public catalog?

15 MS. SAUNDERS: It is. It is a search  
16 of the public catalog of the copyright office and  
17 -

18 MS. PLOVNIK: What work is it - is it  
19 for?

20 MR. BOYSTON: I'm sorry. Where are  
21 we?

22 MS. PLOVNIK: The last page of MPAA



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1 Exhibit 350.  
 2 MS. SAUNDERS: And it deals with the  
 3 work or it's a search for the work "Presumed  
 4 Guilty," which is a Cosgrove Production.  
 5 MS. PLOVNIK: All right. And if you  
 6 - let's see. Flip back one page. I got one page  
 7 ahead of myself. The second to the last page of  
 8 MPAA Exhibit 350. Is that - is that also a  
 9 copyright inset?  
 10 MS. SAUNDERS: It is. It is.  
 11 MS. PLOVNIK: Who was the director of  
 12 the Cosgrove work?  
 13 MS. SAUNDERS: Paul Wendkos,  
 14 W-E-N-D-K-O-S.  
 15 MS. PLOVNIK: And is that - in the  
 16 cover letter to this who was the director of the  
 17 work claimed by Compact and IPTA?  
 18 MS. SAUNDERS: Lawrence Simeone,  
 19 S-I-M-E-O-N-E.  
 20 MS. PLOVNIK: So are they different  
 21 works?  
 22 MS. SAUNDERS: They certainly seem to

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1 be. There seem to be two different works with  
 2 this same title.  
 3 MS. PLOVNIK: So flipping to the next  
 4 MPAA exhibit, MPAA Exhibit 351, so what did you  
 5 learn from reviewing MPAA Exhibit 351?  
 6 MS. SAUNDERS: That the PGA Tour, who  
 7 sent - the PGA Tour confirmed their entitlement  
 8 to claim and the fact that they had certified to  
 9 claim royalties for work involving Bob Hope  
 10 "Inside the Ropes."  
 11 MS. PLOVNIK: And then looking at  
 12 MPAA Exhibit 352, that - reading that what did  
 13 you learn from reviewing that correspondence?  
 14 MS. SAUNDERS: This is a letter I  
 15 received from Bill Hochberg on November 26th and  
 16 he was - he has claimed as an agent and confirmed  
 17 certification of his claim as an agent on behalf  
 18 of his client, which is TWI with respect to a  
 19 work entitled "Healthy Living" and he attached a  
 20 licensing agreement from - involving his client  
 21 and if I'm not - yes, he also attached Exhibits  
 22 or Pages, sorry - copies of extracts for the work

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1 claimed by IPG which is claimed under or on  
 2 behalf of the group IWV Media Group and not TWI,  
 3 which is Mr. Hochberg's claim and those are -  
 4 those seem to be two different works - the IPG  
 5 work on behalf of IWV featuring Jane Seymour and  
 6 the TWI work claimed by Mr. Hochberg not  
 7 featuring Jane Seymour.  
 8 MS. PLOVNIK: So, Ms. Saunders, so we  
 9 just discussed several pieces of correspondence  
 10 that you received regarding issues that were  
 11 raised in IPG's written rebuttal statement.  
 12 Did you receive correspondence from  
 13 all the claimants IPG challenged?  
 14 MS. SAUNDERS: No, we did not.  
 15 MS. PLOVNIK: And do you know why  
 16 not?  
 17 MS. SAUNDERS: Unfortunately, we  
 18 didn't have sufficient time to have answers from  
 19 all of our claimants and also some of our  
 20 claimants responded that the royalty years that  
 21 were at issue were too long ago and they had not  
 22 maintained sufficient business records to

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1 respond.  
 2 MS. PLOVNIK: But were all of the  
 3 titles listed in your written direct testimonies,  
 4 which are MPAA Exhibits 309 and 310, certified by  
 5 MPAA's claimants?  
 6 MS. SAUNDERS: The titles listed in  
 7 Exhibit B, yes. Each one was certified.  
 8 MS. PLOVNIK: And were all of those  
 9 paper certifications produced to IPG in  
 10 discovery?  
 11 MS. SAUNDERS: Yes, they were.  
 12 MS. PLOVNIK: All right. Now, if you  
 13 could take a look at IPG Exhibit 174. That might  
 14 be in the red binder.  
 15 MS. SAUNDERS: No, it's not in the red  
 16 binder.  
 17 MS. PLOVNIK: Oh, no. You're right.  
 18 I think it's a loose document. You put it in the  
 19 binder? Oh, it might be at the end then. I  
 20 think the clerk might have put it in.  
 21 MS. SAUNDERS: Yes. Yes. Yes.  
 22 MS. PLOVNIK: Ms. Saunders, one more

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1 question before you go there. Does MPAA create  
 2 certifications for litigation?  
 3 MS. SAUNDERS: No. No, we create them  
 4 manually for purposes of distribution of  
 5 royalties.  
 6 MS. PLOWNICK: So you maintained them  
 7 as business records in the regular course of  
 8 business?  
 9 MS. SAUNDERS: Yes, of course.  
 10 MS. PLOWNICK: All right. Thank you.  
 11 Now look at IPG Exhibit 124.  
 12 JUDGE STRICKLER: Can I ask a quick  
 13 question? This is to you, counsel, rather than  
 14 to the witness, at least in the first instance.  
 15 You said some of IPG's challenges  
 16 were not the subject of rebuttal with additional  
 17 documents because of the passage of time is what  
 18 the witness said. Can you state now which ones  
 19 were not rebutted, just for the record, or are  
 20 you not aware?  
 21 MS. PLOWNICK: Well, we are - we don't  
 22 have specific correspondence from the claimant

1 like that and certifications that address those  
 2 so it's as - but I just don't understand your  
 3 question, your Honor.  
 4 JUDGE STRICKLER: That's fair. That's  
 5 fair. My question was probably too broad.  
 6 Yesterday Mr. Galaz spoke about - and he  
 7 ballparked it at about 15 or so that he was  
 8 saying that he believed that the claimant that  
 9 was being represented through MPAA was not in  
 10 fact the appropriate claimant and you've now  
 11 presented testimony through Ms. Saunders that,  
 12 according to her testimony and the documents that  
 13 you've introduced into evidence, suggest  
 14 otherwise.  
 15 Out of that group are there some that  
 16 you have not attempted to rebut at this point  
 17 with documents through Ms. Saunders?  
 18 MS. PLOWNICK: Your Honor, if I can  
 19 answer that. So I believe that there are some  
 20 individual titles that we have not produced a  
 21 letter addressing.  
 22 JUDGE STRICKLER: Can you tell me

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1 for some of our entities, but we are rebutting  
 2 all of them. I mean, some of their claims are  
 3 broad claims.  
 4 JUDGE STRICKLER: I understand, and  
 5 the witness in response to your question said  
 6 you're rebutting it and relying on the fact that  
 7 there were certifications to that effect.  
 8 MS. PLOWNICK: Yes.  
 9 JUDGE STRICKLER: So which of the -  
 10 let me say it that way - which of the ones that  
 11 were challenged by IPG are you relying solely on  
 12 the certifications rather than subsequent  
 13 documentation?  
 14 MS. PLOWNICK: Well, your Honor,  
 15 because some of IPG's arguments, and I'm focusing  
 16 now - like, they have one large and general  
 17 argument aimed at all of MPAA's agents and  
 18 claimants are represented through agents. So I  
 19 don't know if I could list - I mean, I think this  
 20 exhibit list --  
 21 So we have documents that we've put in  
 22 here like representation agreements and things

1 which ones offhand, if you know?  
 2 MS. PLOWNICK: I may - I may need to  
 3 get back to you on that. But I don't have that  
 4 right in front of me or memorized. But I - we  
 5 are not - I believe that that would be limited to  
 6 particular titles, not to any of our claimants or  
 7 our representation of claimants.  
 8 JUDGE STRICKLER: It would be titles?  
 9 MS. PLOWNICK: It would be specific  
 10 titles.  
 11 JUDGE STRICKLER: Thank you. I don't  
 12 want to - certainly I don't expect - if you don't  
 13 have it in front of you know now -  
 14 MS. PLOWNICK: And it would - it would  
 15 be a very short list but - I think but we can  
 16 prepare that for you if you would like - the  
 17 specific titles.  
 18 JUDGE STRICKLER: It doesn't even have  
 19 to be written. If it can be orally put into the  
 20 record and you can even do it during closing  
 21 arguments. It would just be - it would be  
 22 helpful for the court if I could - at least this



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1 part of the court.  
2 MS. PLOVNIK: Of the ones - so it  
3 would be specific titles for which we did not put  
4 in a letter or correspondence addressing them?  
5 Is that - I'm just trying to understand what you  
6 are asking for.

7 JUDGE STRICKLER: Right. Yes.

8 MR. OLANIRAN: May I be heard just  
9 quickly, your Honor? I think I understand. You  
10 want to know that we've addressed some of IPG's  
11 challenges with some of the testimony in that Ms.  
12 Saunders has given.

13 And there's also been - there's a  
14 question eventually responding to the challenge  
15 and then there's a question of whether the  
16 challenge actually rises to the level of the  
17 challenge, by a bare assertion by Mr. Galaz.

18 So in some cases - so it's a mix of  
19 those, some we have definitely addressed - there  
20 are some - there were certainly questions that we  
21 didn't address because we don't believe that they  
22 - because Mr. Galaz's - their assertion amount to

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1 - Mr. Galaz's bare assertions that something is  
2 wrong amounts to the fact that something is wrong  
3 to warrant a response.

4 JUDGE STRICKLER: To use your phrase,  
5 it wasn't a trick question. I wasn't trying to -  
6 I wasn't going to trick you with an admission. I  
7 just wanted a sense of what the record shows that  
8 was given specifically in response.

9 MR. OLANIRAN: Absolutely. I  
10 understand.

11 MS. PLOVNIK: So and I - so yeah, so  
12 we're not - if we were to give you a list it  
13 would be a list of titles that we didn't have  
14 specific correspondence on but it would not  
15 necessarily mean that we are conceding them or  
16 that he has met their burden of proof as to them  
17 actually. Is that -

18 JUDGE STRICKLER: So noted. It was  
19 never suggested.

20 MS. PLOVNIK: All right.

21 JUDGE FEDER: I have a question for  
22 the witness. Ms. Saunders, when you reached out

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1 to your claimants for confirmation on some of  
2 these things that were challenged, did any of  
3 them come back with correspondence saying you  
4 know what, they were right - just don't have the  
5 rights?

6 MS. SAUNDERS: No. No, your Honor.  
7 No.

8 JUDGE FEDER: Thank you.

9 MS. PLOVNIK: Any other questions?

10 JUDGE STRICKLER: Did anybody get back  
11 to you and say well, we don't know if IPG had the  
12 rights but we know that the MPAA claimant did not  
13 have the rights?

14 MS. SAUNDERS: No. No.

15 JUDGE STRICKLER: You didn't get that  
16 either?

17 MS. SAUNDERS: The closest we came to  
18 any assertion that they did might not have held  
19 the right to the time they claimed were responses  
20 that suggested that the business records - it was  
21 just too old and they could not confirm. But  
22 they had - they did confirm that they certified

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1 those titles to MPAA.

2 JUDGE STRICKLER: When you say they  
3 confirmed that, they confirmed it orally?

4 MS. SAUNDERS: No. Well, I think I  
5 had a conversation with my contact at ABC. I  
6 think. I don't want to get too far out here  
7 because I may be misremembering but I remember -

8 JUDGE STRICKLER: Well, don't  
9 speculate.

10 MS. SAUNDERS: Oh, sorry. Okay. But  
11 I would have - no, yes, I do orally, yes, by  
12 phone.

13 JUDGE STRICKLER: But you couldn't -  
14 but it would be speculation to try to identify  
15 which ones?

16 MS. SAUNDERS: It would be speculation  
17 to identify which claimant or which titles.

18 MS. PLOVNIK: You're testifying based  
19 on what you remember?

20 MS. SAUNDERS: Exactly, based on my  
21 recollection, yes, and there was only one  
22 instance of recollection - of that kind of

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1 recollection.

2 MS. PLOWNICK: So I was directing your

3 attention to IPG Exhibit 124. Did you find that?

4 MS. SAUNDERS: Yes. Wait. 124 or

5 123? Oh, I'm sorry. It's - you know what? The

6 tabs are attached to the pages and so I thought

7 it's - yeah, I have it.

8 MS. PLOWNICK: Okay. So do you

9 remember Mr. Boydston showing these to you

10 previously in these proceedings?

11 MS. SAUNDERS: I do and it confused me

12 from the start.

13 MS. PLOWNICK: Yeah, you testified you

14 did not recognize this document.

15 MS. SAUNDERS: I did testify that I

16 did not recognize that.

17 MS. PLOWNICK: So now I'm going to

18 show you a document that's been premarked as MPAA

19 Exhibit 360 and we have copies - this has already

20 got the clerk stamp on it but we have copies for

21 defendant.

22 MS. SAUNDERS: Thank you.

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1 MS. PLOWNICK: And this has been

2 premarked as MPAA Exhibit 360. Do you recognize

3 this document?

4 MS. SAUNDERS: Yes, I do. Yes, I do.

5 MS. PLOWNICK: What is it?

6 MS. SAUNDERS: The document you just

7 handed me is an email exchange from between my

8 counsel, Greg Olaniran, and Ashley Morgan of

9 Amity Media TV. Hang on.

10 Let me just make sure I got all of the

11 - yes. Some exchange between what was initiated

12 by Ms. Morgan and I actually remember the

13 initiation of this exchange.

14 MS. PLOWNICK: Well, before you go

15 into a narrative, let me ask a question here. So

16 is - now that you've reviewed this document do

17 you recall the circumstances of this email?

18 MS. SAUNDERS: I do, because Ms.

19 Morgan's original email caused a huge kerfuffle

20 inside of the MPAA. Ms. Morgan contacted the

21 MPAA website. Do you want me to explain that?

22 MS. PLOWNICK: No, no. Yeah. Go

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1 ahead.

2 MS. SAUNDERS: Sorry.

3 MS. PLOWNICK: So explain that you

4 said there was a huge kerfuffle at MPAA. Please

5 explain.

6 MS. SAUNDERS: Yes. Ms. Morgan

7 contacted the MPAA website which you can see from

8 the second page at the bottom on Wednesday the -

9 MS. PLOWNICK: Ms. Saunders, before

10 you get into this, I want to move the admission

11 of MPAA Exhibit 360.

12 MR. BOYDSTON: Your Honor, I'm not

13 sure why this wasn't introduced earlier and

14 identified. It was clear in our opening with

15 oral statements that we were making an issue out

16 of this. I don't know why this -

17 JUDGE BARRETT: What's the legal basis

18 of your objection?

19 MR. BOYDSTON: It was not identified

20 in the exhibit list and that's the basis of my

21 objection.

22 MR. MACLEAN: Your Honor, it's - maybe

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1 I'm missing something. It's fairly apparent to

2 me that MPAA 360 is being offered in response to

3 IPG 124, which was not on IPG's exhibit list. So

4 I have no objection.

5 MS. PLOWNICK: Your Honor, that is

6 exactly the case here.

7 JUDGE BARRETT: 360 is admitted.

8 MS. PLOWNICK: Okay. So now that this

9 document has been admitted there's something I

10 think you were beginning to go into the contents

11 of it so -

12 MS. SAUNDERS: Yes. Yes. Back in

13 2011, Ms. Morgan contacted MPAA by our website

14 seeking to report what she called mail fraud

15 activity based on a letter she received from

16 Worldwide Subsidy Group and that enquiry made its

17 way through the MPAA and eventually found its way

18 to me and I alerted Mr. Olaniran and asked him to

19 contact Ms. Morgan in response to her July 27th

20 email.

21 MS. PLOWNICK: Now, Ms. Saunders, you

22 have in front of you IPG Exhibit 124 and MPAA



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1 Exhibit 360. Do those two documents look the  
2 same?

3 MS. SAUNDERS: No. The only thing  
4 that looks the same is - well, there are two  
5 parts. Well, no. I'm sorry.

6 The only part that looks the same is  
7 the obviously - well, it seems very odd because  
8 the message in the middle on the first page of  
9 124 - IPG's 124 has Mr. Olaniran's inquiry or his  
10 response to her - Dear, Ms. Morgan, I'm outside  
11 counsel for MPAA - but that response is on MPAA  
12 Exhibit 360 at the top of Page 2.

13 Interestingly, in IPG's 124 the two of  
14 Mr. Olaniran's email has been deleted somehow.  
15 Mr. Olaniran - so that's the only part that I see  
16 here. The only point of comparison between 124 -  
17 IPG 124 and MPAA 360 that appears to be the same.

18 MS. PLOVNIK: All right. And what  
19 part - what is in the content that's missing from  
20 IPG Exhibit 124?

21 MS. SAUNDERS: I'm sorry. What's in  
22 the content of -

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1 MS. PLOVNIK: What is the content  
2 that is missing from IPG Exhibit 124?

3 MS. SAUNDERS: Well, Exhibit 124 seems  
4 to imply that MPAA solicited Ms. Morgan on a mail  
5 fraud inquiry and MPAA Exhibit 360 makes it clear  
6 that Ms. Morgan came to MPAA in order to report a  
7 concern about mail fraud involving WSG and that  
8 MPAA through Mr. - I'm sorry, Mr. Olaniran  
9 reached out to her and she responded to him on  
10 the cover page - the first page, sorry, then Page  
11 360 thanking him for his email and offering to  
12 discuss it and referencing, as I see here on the  
13 first page, an email that she had received from  
14 Pick & Boydston lawyer Mike Cutler, which  
15 interestingly is included in what must be a  
16 compendium or some sort of compilation of this  
17 email that was provided in IPG's 124.

18 MS. PLOVNIK: Okay. Thank you, Ms.  
19 Saunders. I have no further questions for the  
20 witness at this time.

21 JUDGE BARRETT: Mr. Boydston.

22 MR. BOYDSTON: Before I go forward,

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1 I'd just note we normally take a break. I don't  
2 know if we - I just don't want to get going and  
3 then stop.

4 JUDGE BARRETT: I couldn't agree more.  
5 We're going to take a morning recess. Fifteen  
6 minutes is our goal.

7 MR. MACLEAN: Your Honor, never mind.  
8 I'm sorry.

9 (Whereupon, the above-entitled  
10 proceeding recessed at 10:55 a.m. and resumed at  
11 10:59 a.m.)

12 JUDGE BARRETT: Please be seated. Mr.  
13 Boydston?

14 CROSS EXAMINATION

15 MR. BOYDSTON: Thank you, Your Honor.  
16 Ms. Saunders, again I'm Brian Boydston. I  
17 represent Independent Producers Group.

18 You were asked some questions about  
19 IPG's Exhibit 104 which was a number of documents  
20 from AGICOA and also from some other entities.  
21 And you made the comment that these don't  
22 necessarily -- I think your comment, and correct

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1 me if I'm wrong, was that those merely represent  
2 monies paid from external sources, obviously not  
3 the Copyright Office.

4 And therefore I think your point was  
5 they wouldn't establish that IPG had any rights  
6 to the copyright royalties in this proceeding.  
7 Was that the point?

8 MS. SAUNDERS: That is yes, more or  
9 less the point.

10 BY MR. BOYDSTON:

11 Q Okay. Understood. Would it not  
12 though, I think it would, would it not show that  
13 IPG has some sort -- had rights to collect  
14 royalties from those foreign distributors or  
15 those foreign entities that paid them?

16 A In -- if those documents could in fact  
17 be linked, and by this I refer I think only to  
18 the AGICOA distribution statement, which did not  
19 indicate or confirm any relationship that I could  
20 see with IPG. If that were -- if there was a  
21 link that could be established, then it would in  
22 fact indicate that IPG had claimed certain titles

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1 with AGICOA for which it was claiming monies in  
2 other countries outside the U.S.

3 Q And based upon your position with  
4 AGICOA, are you relatively familiar with AGICOA's  
5 process of making payments like that?

6 A Yes.

7 Q And do they generally accompany them  
8 with some sort of documentation?

9 A Document -- they usually accompany  
10 them with a titles list.

11 Q Okay.

12 A Which is what I think we saw here.

13 Q Okay. Thank you. With regard to the  
14 issues regarding DragonBall Z, in your  
15 communications and in your organization's  
16 communications, did Fox Family or ABC Family ever  
17 provide any agreements that had regarding an  
18 entitlement to collect royalties for DragonBall Z  
19 from 1999 to 2009?

20 A In this proceeding I don't believe  
21 that we asked Fox Family for such documents.

22 Q Okay. And they certainly didn't

94

1 provide any then, right, if you didn't ask them?

2 A Correct.

3 Q Thank you. With regard to let's see,  
4 you were asked some questions about IPG 22,  
5 Exhibit 22 rather.

6 A Do I need to look at this Mr.  
7 Boydston?

8 Q Yes, please.

9 A Okay, hang on, give me a second then.

10 Q Yes.

11 A Do you -- is that volume one?

12 Q Yes.

13 A Yes. I think it's volume one. Okay.  
14 Yes, yes.

15 Q Now you were asked questions about  
16 that and actually maybe you don't need to look at  
17 it that much, but anyway I'm glad you have it in  
18 front of you just for reference.

19 Now my understanding is that -- are  
20 you aware of any -- I'm not aware of anything.  
21 Are you aware of anything in the record that  
22 establishes that there was some sort of an

95

1 assignment of the rights to DragonBall Z to a  
2 distributor?

3 A I'm sorry, are you talking about in  
4 the record in front of me, or the paper in front  
5 of me, in the Exhibit? Or in the entire record  
6 of this proceeding?

7 Q The entire record. I'm not aware of  
8 any.

9 A Actually I am. And that would be the  
10 CRB Decision or the CRB Decision that said that  
11 --

12 Q Well I know what the CRB Decision  
13 says. Are you aware of any contractual  
14 assignment of those rights?

15 A Other than that which may have been  
16 relied upon by the CRB in making that ruling, no.

17 Q Okay. And are you aware of any  
18 particular documents that the CRB relied on in  
19 making that ruling in 1997?

20 A No, I was not a party to that  
21 proceeding.

22 Q Right. Now with regard to -- just to

96

1 clarify again -- well, never mind, I already  
2 clarified it.

3 With regard to Screenrights and EGEDA,  
4 you said that you're familiar with membership  
5 agreements that they have.

6 A Um-hum.

7 Q Now when you said that membership  
8 agreements, what is that exactly? And I think I  
9 have a good guess, but.

10 A That means that when one becomes  
11 associated as a member of either of those two  
12 CMOs, one would normally fall in a membership  
13 agreement. And Screenrights attached an exemplar  
14 of their membership agreement to the letter they  
15 sent to me which we discussed earlier this  
16 morning.

17 And EGEDA membership agreements I have  
18 seen -- I've seen them in the course of my  
19 professional career.

20 Q Okay. And do those membership  
21 agreements based upon your understanding of them,  
22 I assume that they -- and I am assuming as I'm



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1 asking the question.

2 JUDGE BARRETT: Mr. Boydston, I'm  
3 sorry to interrupt, but so far every question  
4 you've asked since the break, you've said, you  
5 know, I don't know, but do you know.

6 MR. BOYDSTON: I'll stop.

7 JUDGE BARRETT: Thank you. Because  
8 what you know or don't know or what you assume or  
9 don't assume is really not --

10 MR. BOYDSTON: Irrelevant.

11 JUDGE BARRETT: Relevant.

12 MR. BOYDSTON: Correct. What do the  
13 membership agreements provide? And what I mean  
14 by that more specifically is let's say I'm a  
15 producer in Australia and I sign a membership  
16 agreement with Screenrights. Does that mean that  
17 then Screenrights will take claim applications  
18 from me for royalties?

19 MS. PLOWNICK: I'm going to object.  
20 Ms. Saunders is just testifying from her own  
21 knowledge. And unless she knows, I mean, this is  
22 just a hypothetical situation that may be beyond

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1 her personal knowledge. So I object.

2 MR. BOYDSTON: And if it is, so be it.  
3 I'm -- she said she was familiar with the  
4 membership agreements. I'm just trying to ask  
5 what they're --

6 JUDGE BARRETT: Overruled.

7 MS. SAUNDERS: So in the membership  
8 agreement, the language that I recall, and I can  
9 look at it more specifically if you'd like,  
10 refers to the fact that claimants -- that  
11 claimants understand or authorize, and I think  
12 it's more strongly than that. I think it's that  
13 they authorize Screenrights to claim royalties in  
14 Australia and elsewhere in the world, on their  
15 behalf.

16 I do not know how claimants who sign  
17 that agreement then confirm their titles to  
18 Screenrights.

19 BY MR. BOYDSTON:

20 Q Okay. How about EGEDA? Is there a  
21 similar -- when you said membership agreements,  
22 were you also meaning similar membership

99

1 agreements that EGEDA has?

2 A They're not -- they are -- in this  
3 respect, they are similar. Except that in the  
4 EGEDA membership agreements that I have seen,  
5 there's a specific assignment to EGEDA of those  
6 rights.

7 Moreover, as I said the Spanish law  
8 presumptively designates EGEDA as the  
9 representative of Spanish producers with respect  
10 to cable transmission rights in Spain.

11 Q Understood. Does the MEAA have those  
12 membership agreements for EGEDA and Screenrights?

13 A Other than -- no. No, we do not. The  
14 Screenrights as I said was attached to their  
15 letter. So I have that one. But I do not have  
16 one for EGEDA.

17 Q Okay. And obviously not -- other than  
18 the individuals ones that have been presented,  
19 clearly not all of them have been presented.

20 A Clearly not all of them.

21 Q Do you have a sense as to how many  
22 different individual claimants there are in this

100

1 proceeding for EGEDA?

2 A For EGEDA I think there are a great  
3 many. I don't -- based on the certification  
4 reports that I've seen. And for Screenrights I  
5 do not know.

6 Q Okay. And with regard to contracts,  
7 again, there's no -- correct me if I'm wrong, but  
8 there's nothing in the record demonstrating a  
9 contract between EGEDA and Fintage, correct?  
10 That you're aware of?

11 A Actually that is not correct. I am  
12 aware of the joint letter that was sent to the  
13 Copyright Office that confirms that Fintage is  
14 the designated representative of EGEDA.

15 And inferring from that letter that  
16 WSG and Fintage were previously both  
17 representative of EGEDA.

18 Q I understand it's a fine point. But  
19 correct me if I'm wrong, I don't see any contract  
20 between EGEDA and Fintage. Are you aware of a  
21 contract between EGEDA and Fintage?

22 MS. PLOWNICK: Objection, Your Honor.

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1 I feel that -- well, I'll just say. He is again  
2 saying what he sees or what he knows. He's also  
3 asking Ms. Saunders to characterize the entire  
4 record and she can -- so can he please direct her  
5 to specific documents or to what kind of term or  
6 scope he's going for here.

7 I mean she can't comment on the whole  
8 record.

9 JUDGE BARRETT: I believe the question  
10 was are you aware of?

11 MS. SAUNDERS: I'm sorry, repeat that  
12 question please Mr. Boydston?

13 MR. BOYDSTON: Are you aware of the  
14 existence of a contract between EGEDA and  
15 Fintage?

16 MS. SAUNDERS: Fintage wrote to me to  
17 say that they had a representation agreement with  
18 EGEDA. So in that capacity I'm aware. I have  
19 not seen that contract, no sir.

20 BY MR. BOYDSTON:

21 Q Understood. And we talked about the  
22 membership agreements between EGEDA and its

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1 efforts that you described to prepare for this  
2 proceeding and in the aftermath of receiving  
3 IPG's rebuttal statement, do you recall  
4 approximately when that was?

5 They were filed in the middle of  
6 October. But do you remember when you were  
7 provided with them?

8 A I'm sorry, when I was provided with  
9 the rebuttal? IPG's rebuttal? I do not recall.  
10 I am so sorry.

11 Q Okay. Does mid-October sound  
12 familiar?

13 A Yes, I mean what are we now? Did I  
14 know that the direct cases were filed in May,  
15 we're now in December, that sounds fair.

16 Q And I understand that the time was  
17 difficult as it was for all of us. You said that  
18 some of the people you contacted said they didn't  
19 have records any longer?

20 A I said one person that I spoke with --

21 Q Oh, I'm sorry.

22 A Did not. Said they could not produce

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1 members if you will. And the membership  
2 agreements between Screenrights and its members  
3 if you will.

4 A Um-hum.

5 Q And I understand that MPAA doesn't  
6 have those. Does MPAA have any other contracts  
7 between EGEDA and its individual members?

8 A No. We do not.

9 Q And how about Screenrights?

10 A No, we do not.

11 Q Thank you.

12 A I -- Mr. Boydston, I forgot to mention  
13 one thing with respect to EGEDA and their  
14 agreement with Fintage. I actually have spoken  
15 personally with representatives of EGEDA, the  
16 managing director who has confirmed to me  
17 personally that he has an agreement with Fintage  
18 for the years in question.

19 Q Did you ask him to produce it to you?

20 A No. We were having dinner.

21 Q You could have called to produce at  
22 dinner I would assume. With regard to your

104

1 those records because they were too old.

2 Q Okay. Were there other people you  
3 contacted that just didn't respond at all?

4 A I infer that there were. We contacted  
5 everyone. I received letters from only the ones  
6 that -- from those that have been produced today.

7 Q Okay. Did you receive any documents  
8 or any letters or anything back from anyone that  
9 you did not produce in this proceeding?

10 A No, we did not.

11 Q Now, some of those entities responded  
12 and they addressed some of the programs at issue,  
13 but not all, correct?

14 A I can't -- I'm so sorry, I can't  
15 squeeze to that.

16 Q Fair enough.

17 A I have to take your word for it.

18 Q CBS did not respond in any way  
19 regarding the Late Show or the Emmy Awards, did  
20 it?

21 A I do not recall seeing anything  
22 concerning those programs. I don't believe we



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1 are claiming the Emmy Show in this proceeding.  
2 So I would not have expected to see anything in  
3 regards to that show.

4 Q My question was just that they didn't  
5 provide anything regarding it. Or did they?

6 A And my answer is the same.

7 Q So is it no?

8 A That is a no.

9 Q Okay, thanks. Now with regard to the  
10 show Critter Gitters and the company Litton, did  
11 you ask Litton for confirmation that it had the  
12 rights to Critter Gitters?

13 A I assumed that my counsel did as I  
14 instructed.

15 Q Okay. Are you aware of any kind of  
16 confirmation from Litton to that regard?

17 A I am not.

18 Q With regard to --

19 JUDGE STRICKLER: Excuse me, can I  
20 just interrupt for a second?

21 MR. BOYDSTON: Sure.

22 JUDGE STRICKLER: You said you assume

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1 respond Your Honor, is that I travel extensively  
2 and it would have taken far too much time for me  
3 to individually reach out to each claimant. I'm  
4 sure that would have been my counsel's  
5 preference.

6 JUDGE STRICKLER: Okay. So your  
7 knowledge of what was in fact received --

8 MS. SAUNDERS: Yes.

9 JUDGE STRICKLER: Comes from whether  
10 counsel's providing the -- providing the  
11 responsive documents to you or the responsive  
12 documents came directly to you?

13 MS. SAUNDERS: The responsive  
14 documents were all sent to me.

15 JUDGE STRICKLER: As far as you know?

16 MS. SAUNDERS: Sir yes. The  
17 responsive documents that I have in my possession  
18 were sent to me and they are in this record.

19 JUDGE STRICKLER: Thank you.

20 BY MR. BOYDSTON:

21 Q Back to CBS. CBS did not give any  
22 confirmation that it owned the rights to

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1 your counsel contacted them as you instructed.  
2 In all of these instances that you're talking  
3 about, did you instruct counsel to make the  
4 contact?

5 MS. SAUNDERS: I did. I instructed my  
6 counsel to confirm. And the letters were sent to  
7 me Your Honor.

8 MR. BOYDSTON: Staying -- oh, sorry.

9 JUDGE STRICKLER: You instructed  
10 counsel to check with the copyright owners?

11 MS. SAUNDERS: That was simply yes,  
12 sir. Yes sir.

13 JUDGE STRICKLER: And did you direct  
14 -- how do you know whether or not counsel  
15 received the responses as opposed to you not --  
16 you didn't receive the response?

17 MS. SAUNDERS: Well, that's a good  
18 point. And I don't know if counsel. I assume  
19 that my counsel, as my counsel would have shared  
20 those responses with me had he received them. So  
21 I -- but I obviously was not in his office.

22 The reason that I asked my counsel to

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1 Singsation either, did it?

2 A Not to me.

3 Q Do you know if they gave it anybody  
4 else?

5 A I do not know.

6 Q With regard to Transworld  
7 Incorporated. I believe that they provided a  
8 confirmation that they did -- they addressed the  
9 issue with regarding to Healthy Living Mysteries  
10 of the Mind, correct.

11 A Yes. Not the Jane Seymour work, but  
12 the other work.

13 Q And I -- by the Jane Seymour work, why  
14 do you say it that way? I think I know what  
15 you're referring to, but what I think is not  
16 important of course.

17 IWE did not respond with regard to  
18 Healthy Living Parenting Beyond, did it?

19 A I would have to look at their  
20 correspondence. I'm so sorry Mr. Boydston, I  
21 don't recall.

22 Q Well, let's do that real quick.

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1 A Okay.

2 MS. PLOWNICK: I have an objection.

3 I think his mischaracterizing the Millen

4 Affidavit. I don't recall Healthy Living

5 Parenting and Beyond even in that declaration.

6 And I --

7 MR. BOYDSTON: Your Honor, I think

8 that's argument. And they can make that

9 argument.

10 MS. PLOWNICK: But I mean, so anyway,

11 I think that this is irrelevant to the extent it

12 said title Healthy Living Parenting and Beyond.

13 It's not the title that's been addressed here.

14 MR. BOYDSTON: And I disagree and I

15 think that's an argument not an objection.

16 JUDGE BARRETT: Overruled. We'll let

17 Mr. Boydston finish his case.

18 MR. BOYDSTON: Thank you, Your Honor.

19 Please take a look at Exhibit 352.

20 That's the --

21 MS. SAUNDERS: I had it open right

22 here.

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1 BY MR. BOYDSTON:

2 Q Oh, great.

3 A Okay.

4 Q Now, looking at that letter, I see

5 they addressed Healthy Living Mysteries of the

6 Mind on the first page of the letter.

7 A Um-hum.

8 Q They mentioned it a couple of times.

9 And I don't see -- and then I look at the third

10 page, which is another letter dated October 3,

11 2003, which addresses the same show, Healthy

12 Living Mysteries of the Mind.

13 Looking through the rest of this

14 Exhibit, I didn't see any other Healthy Living

15 titles referenced. And so, looking at that, I

16 renew my question, I don't believe they addressed

17 the issues about Healthy Living Parenting and

18 Beyond. Would you agree with me?

19 A So my understanding Mr. Boydston is

20 now you actually want me to read this letter into

21 the record or you do not?

22 Q No, no, no, I don't want you to read

111

1 the letter into the record.

2 A Okay.

3 Q Just take a look at it. My question

4 -- my original question was did they address

5 Healthy Living Beyond --

6 A Okay.

7 Q Excuse me, I almost said Beyond

8 Parenting. That would be a curious title.

9 A All right, something about Parenting.

10 Q I was asking about if they addressed

11 Healthy Living Parenting Beyond.

12 A I do not see any reference to that

13 work.

14 Q Thank you. And at no --

15 A And I assume that's an episode? Is

16 that fair?

17 Q Well, I'm not supposed to answer the

18 questions.

19 A Oh, okay. I'm sorry. Of course. Of

20 course.

21 Q I ask them and you do. With regard to

22 the Healthy Living series of Jane Seymour, you

112

1 already said that that's not being claimed and

2 that certainly wasn't addressed in this letter or

3 these materials, correct?

4 A The Jane Seymour work was referenced

5 in the materials only in regard to the fact that

6 Mr. Hochberg's client TWI is not claiming that

7 Jane Seymour work.

8 Q Understood. That was consistent with

9 your prior answer, yes.

10 A Okay. Yes.

11 Q Are you aware that those are -- that's

12 owned by Five Star?

13 A I'm not aware of that.

14 Q Okay. Are you familiar with the

15 entity INW and it's ownership of Healthy Living

16 Parenting and Beyond?

17 A Only that INW is the claimant

18 indicated in the Exhibit 3 of this -- of Mr.

19 Hochberg's letter of November 26. And the

20 reference under Healthy Living, the description

21 of the show with Jane Seymour indicates INW Media

22 Group as it does on the following page.



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1 Q Okay. I'm going to ask you to -- I'm  
2 sorry, I'm just checking my notes so I don't ask  
3 a question twice. It's always a good idea.

4 Please take a look at Exhibit 345.  
5 And these are the certifications, the first one  
6 is calendar year 2003, Satellite.

7 A Um-hum.

8 Q We've talked about these at length.

9 A Um-hum.

10 Q And moving to the list of programs  
11 which appear at the second pages and following.

12 A Right.

13 Q And just to frame it, you testified  
14 and it's very clear now. These lists were  
15 generated by many of these third party vendors, I  
16 don't know they are. And then provided by to the  
17 MPAA.

18 A Um-hum.

19 Q And then the third party vendor's  
20 information was passed on to the MPAA.

21 A Um-hum. Yes.

22 Q Now, with regard to these lists here

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1 in 345 and the other ones as well, my  
2 understanding from your testimony is that those  
3 were used to create Exhibits A and B to your  
4 testimony.

5 A Correct.

6 Q And I'm asking again because there's  
7 now a lot of questions. As you know, there was  
8 kind of a blizzard of questions about that. And  
9 I got confused.

10 So that's all I just wanted to  
11 confirm. Now -- and I think you said correct.

12 A I -- what's I'm saying Mr. Boydston is  
13 --

14 MR. MacLEAN: Objection.

15 MS. SAUNDERS: Oh, go ahead.

16 MR. MacLEAN: Your Honor, I don't see  
17 how this witness can testify where it was correct  
18 that Mr. Boydston was confused.

19 MR. BOYDSTON: Honor appreciated.

20 JUDGE BARRETT: Noted.

21 MS. PLOVICK: Your Honor, I also just  
22 object that we're retreading ground that we've

115

1 already covered extensively. He's crossed her  
2 now, I think this is the third time on this  
3 topic.

4 MR. BOYDSTON: I just -- as I said,  
5 there were a lot of questions about this. I'm  
6 just quickly confirming it and I'm going to move  
7 on.

8 She said correct. But now she wanted  
9 to say something else.

10 JUDGE BARRETT: Go ahead.

11 MS. SAUNDERS: I'm sorry.

12 JUDGE BARRETT: The objection is  
13 overruled. Let's just get this done.

14 MS. SAUNDERS: So, Mr. Boydston. As  
15 I have said many times now, Exhibit B was  
16 prepared from MPAA certification reports very  
17 full stuff. Certification reports were returned  
18 to the MPAA. That is the basis for Exhibit B.  
19 Those titles are what is in Exhibit B.

20 MR. BOYDSTON: Okay. As a result, to  
21 the extent that there were programs in the list  
22 in Exhibit 45 that were crossed out, is it then

116

1 true that those that are crossed out would not  
2 appear in Appendix B?

3 MS. SAUNDERS: If those titles had  
4 been crossed out, yes it -- you're correct, they  
5 would not have been -- those titles, the marked  
6 out titles would not be in Exhibit B.

7 MR. BOYDSTON: Okay. Thank you.

8 JUDGE STRICKLER: And when you said  
9 Exhibit B, you mean Appendix B, just so the  
10 record is clear.

11 MS. SAUNDERS: I'm sorry, yes. I'm  
12 sorry Your Honor. Exhibit B to both my --

13 JUDGE STRICKLER: No, Appendix.

14 MS. SAUNDERS: Cable and Satellite  
15 direct testimonies.

16 JUDGE STRICKLER: Appendix A and  
17 Appendix B.

18 MS. SAUNDERS: Appendix A and Appendix  
19 B. Yes. Now I am also getting confused.

20 BY MR. BOYDSTON:

21 Q And you said in response to my  
22 question you said Appendix B was prepared from

117

1 these lists --  
 2 A The titles.  
 3 Q That excluded Appendix A. And I  
 4 assume that was intentional?  
 5 A No, it was not intentional. I thought  
 6 we were focusing on the titles.  
 7 Q Okay. Thank you. With regard to  
 8 Appendix A which was the remers, was that list in  
 9 your -- was Appendix A to your testimony created  
 10 from the -- from these lists attached to Exhibit  
 11 345, et cetera?  
 12 A The information in Exhibit A was  
 13 compiled based on the information on the cover  
 14 page, the certificate of entitle.  
 15 Q Understood.  
 16 MS. PLOWNICK: Your Honor, the witness  
 17 is -- he hasn't shown her these Exhibits.  
 18 They're admitted MPAA Exhibits 309 and 310 and  
 19 the Appendices are attached. And I think he's  
 20 confusing her as to which one is A and which one  
 21 is B.  
 22 So I mean I can redirect, however, I

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1 just -- you know, if they're here, she can look  
 2 at them and that might make all of us you know,  
 3 be able to see and be clear. So I --  
 4 MR. BOYDSTON: Ma'am, do you  
 5 understand what I'm talking about? Are you  
 6 clear? Or would it help to look at those?  
 7 MS. SAUNDERS: So let me try to sum  
 8 this up. Certification -- the certifi -- the  
 9 certification of entitlement, which indicates the  
 10 claimants' names, those names are in Exhibits A  
 11 to each of my cable and my Satellite direct  
 12 testimony, which I think are 309 and 310 as filed  
 13 in this proceeding.  
 14 BY MR. BOYDSTON:  
 15 Q Understood.  
 16 A Okay.  
 17 Q Okay and I think we already clarified  
 18 B, so I won't belabor that.  
 19 A Okay.  
 20 Q Now, our review of the certifications  
 21 indicated that the satellite certifications ran  
 22 to about 5,800 pages. And that includes both the

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1 certification face page and the list following.  
 2 That was about 5,800 pages.  
 3 And the cable certifications were  
 4 about 3,400 pages. So that's a lot of pages  
 5 obviously. It's over 9,000 pages.  
 6 So were all those pages gone through  
 7 manually and the information derived from it and  
 8 then typed into this list that became Appendix A  
 9 and a list that became Appendix B? Was that how  
 10 it was done?  
 11 A I do not know. My counsel prepared  
 12 those exhibits Mr. Boydston. And remember, we're  
 13 dealing with an enormous number of royalty years.  
 14 So it was unfortunate but not surprising that  
 15 there would be that many pages.  
 16 Q Fair to understand that it would be  
 17 that many pages. Did you ever have any  
 18 discussions with counsel in which they indicated  
 19 to you how it was that they prepared that?  
 20 A No.  
 21 MS. PLOWNICK: Objection. It's  
 22 privileged.

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1 MR. BOYDSTON: Sorry, Your Honor,  
 2 withdrawn.  
 3 And those Appendices were Appendices  
 4 to your testimony that was prepared I think in  
 5 the spring of this year, correct?  
 6 MS. SAUNDERS: The cases were filed in  
 7 May.  
 8 BY MR. BOYDSTON:  
 9 Q Yes.  
 10 A So it would have been prepared before  
 11 the direct cases were filed in my --  
 12 Q Okay. And obviously before that -- at  
 13 was before that that Mr. Whitt gave the hard  
 14 drive to you. I think you said it was 2010, is  
 15 that correct?  
 16 A Ms. Kessler retired in 2010. I have  
 17 said that. I do not recall any longer if I have  
 18 -- I don't believe I've said when Mr. Whitt gave  
 19 us that hard drive. And I don't believe I  
 20 recall.  
 21 Q Okay.  
 22 A Whenever we terminated Mr. Whitt's



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1 services or we -- you know, he retired, --  
 2 Q Right.  
 3 A We would have obtained the hard drive  
 4 at that time.  
 5 Q Yes. And it was at least a couple of  
 6 years ago, right?  
 7 A More than a couple.  
 8 Thank you. With regard to  
 9 Fintage, did Fintage -- I don't believe Fintage  
 10 ever addressed -- well, strike that.  
 11 Do you have an understanding as to  
 12 whether or not Fintage ever addressed the issue  
 13 of whether it had a current contract for this  
 14 time period we're at here, '99 to 2009, with TV  
 15 Azteca or Televisa?  
 16 A If I could refer to Fintage's letter,  
 17 I think that --  
 18 Q Oh, yes, please have --  
 19 A That has --  
 20 Q There are two things about Fintage,  
 21 there's a -- yes, let's look at their letter.  
 22 There's their letter and their certification.

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1 A Here it is. Okay.  
 2 Q Certainly let's look at their letter.  
 3 Oh, no I -- yes, let's look at their letter which  
 4 is 346. Conveniently the next number.  
 5 A Um-hum.  
 6 Q What I know I not important. I will  
 7 tell you I didn't see one, but I'm often  
 8 incorrect. Just ask my wife.  
 9 A I'm sorry, your question is?  
 10 Q Whether or not Fintage ever addressed  
 11 the issue as to whether or not it had a current  
 12 -- a right to collect copyright royalties for TV  
 13 Azteca and Televisa for the time period in  
 14 question here in these proceedings?  
 15 A Well in the Fintage letter of November  
 16 21, 2014, Fintage tells me that they have  
 17 attached a representation agreement dated January  
 18 1, 2003 with Televisa and a representation  
 19 agreement dated March 2004 between TV Azteca.  
 20 I do not recall whether those  
 21 agreements -- but I'm happy to look at them to  
 22 see if they indicate the period of time of the

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1 claim.  
 2 Q Well, I appreciate that and let me  
 3 just ask a different question.  
 4 A Okay.  
 5 Q Did they ever address the fact that  
 6 their representation -- that they terminated  
 7 their representation at one time with Fintage?  
 8 A No. They do not. I'm not aware of  
 9 that.  
 10 Q Okay. With regard -- let's look at  
 11 the next Exhibit, which is 347 regarding  
 12 Screenrights. And now I believe they make a  
 13 claim for Buck McNeely, The Outdoorsman in 2009.  
 14 Is that your understanding?  
 15 Actually, well, I think I may be  
 16 confusing here and I don't want to be. The  
 17 second page of their letter references The  
 18 Outdoorsman with Buck McNeely, right?  
 19 A Yes it does.  
 20 Q Now in the materials following this,  
 21 there aren't any of these materials following  
 22 that second page. The deal with the Buck McNeely

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1 program, are there?  
 2 A Well, let me just have a look. I  
 3 believe these are simply agreements with the  
 4 relevant entities that are their members.  
 5 And in the letter they indicate that  
 6 they are claiming the series The Outdoorsman on  
 7 behalf of one of those members whose membership  
 8 form is attached to their letter. Which is the  
 9 ATA Trading Corporation.  
 10 Q Okay. And I see the ATA Trading  
 11 Corporation document. But I don't see anything  
 12 under it that references The Outdoorsman.  
 13 A No, there's no entities attached to  
 14 this at all.  
 15 Q Okay. So I'll leave that as it is.  
 16 It is what it is.  
 17 Let's look at Exhibit 348 regarding  
 18 CBS Broadcasting.  
 19 A Um-hum.  
 20 Q Now we've covered this already, some  
 21 of this already I believe. Now there is some  
 22 information attached to this about regarding

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1 Martha Stewart Living, correct?  
 2 A Yes, there is.  
 3 Q Is there any reason why there's  
 4 nothing from Martha Stewart Living itself?  
 5 A Hang on. Well there is a letter  
 6 attached to Martha Stewart Living from Eyemark  
 7 Entertainment.  
 8 Q Why I -- there's nothing here from  
 9 Martha Stewart Living itself that I see. And I  
 10 don't think -- and my question, is there a reason  
 11 why that is? But it certainly is some reason  
 12 why?  
 13 A I don't know. I believe -- I don't  
 14 know. I don't know. It may have seemed  
 15 unnecessary given the license agreement.  
 16 Q Okay. But why --  
 17 A CBS Broadcasting is not normally an  
 18 entity that one would consider to make false  
 19 assumptions about their rights.  
 20 MR. BOYDSTON: Move to strike the last  
 21 comment. It's beyond the scope and it's an  
 22 opinion.

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1 But let me ask you this. The  
 2 agreement between -- and there is no agreement in  
 3 the record or attached to this Exhibit between  
 4 CBS and Martha Stewart, correct?  
 5 MS. SAUNDERS: There is no -- there is  
 6 no agreement between --  
 7 MS. PLOWNICK: Objection, this  
 8 misconstrues the evidence.  
 9 MR. BOYDSTON: Well I think it  
 10 correctly states the state we are in.  
 11 JUDGE BARRETT: Overruled.  
 12 MS. SAUNDERS: Eyemark -- Eyemark has  
 13 -- an agreement with Eyemark is attached.  
 14 Eyemark being the entity that -- this is a  
 15 complicated one.  
 16 So, Martha Stewart Living is otherwise  
 17 known as Time TV Ventures Productions. And there  
 18 is an agreement between Eyemark Entertainment and  
 19 Martha -- sorry, KSL, Martha Stewart  
 20 Living/Time TV Ventures.  
 21 So I see -- believe you can conclude  
 22 that this is -- there is an agreement with Martha

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1 Stewart Living.  
 2 BY MR. BOYDSTON:  
 3 Q You're right. And I think that goes  
 4 from 2001 forward, correct?  
 5 A Excuse me, let's see what does that  
 6 say? Well CBS tells me that they have rights to  
 7 claim as of 2000. The Eyemark letter to Martha  
 8 Stewart Living is dated 1986 and it was signed  
 9 1996.  
 10 A distribution agreement with Eyemark  
 11 and Martha Stewart Living/Time TV is dated 1995.  
 12 So it proceeds 2000.  
 13 Oh, and Martha Stewart herself signed  
 14 one of these documents. Now -- on October 25,  
 15 1996.  
 16 Q Yes. I see that as well. Let's move  
 17 onto Exhibit 349 regarding 20th Century Fox and  
 18 specifically the letter addresses AFI Life  
 19 Achievement Award, a Tribute to Barbara  
 20 Streisand.  
 21 Now is it your understanding that AFI  
 22 is the underlying owner of this entity -- of this

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1 property rather?  
 2 A Well, let me just see Mr. Boydston,  
 3 hang on a second. I read all these at one time.  
 4 I apologize my recollection does not stretch so  
 5 that I can recall these things perfectly.  
 6 JUDGE FEDER: Which Exhibit are we on  
 7 now?  
 8 MR. BOYDSTON: We are on 349.  
 9 JUDGE FEDER: Thank you.  
 10 MS. SAUNDERS: So, as I understand it,  
 11 the producer is AFI -- the producer is AFI of  
 12 this -- so AFI is the producer of this work. I  
 13 would say yes, it appears that they are the  
 14 owner.  
 15 BY MR. BOYDSTON:  
 16 Q And therefore they should be listed as  
 17 the owner on appropriate documents, correct?  
 18 A Well, no. They are the producer who  
 19 has assigned the rights. So the fact that they  
 20 own the show as I previously stated, does not  
 21 indicate whether or not they have the right to  
 22 receive cable or satellite retransmission



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1 royalties.

2 Q I realize that, but they are the owner  
3 and if something demands that the owner be  
4 listed, then they would be the ones to be  
5 listed, would they not?

6 A If something demanded, the owner of  
7 what Mr. Boydston? The show --

8 Q The owner of the show.

9 A As opposed to the retransmission  
10 royalties?

11 Q Yes. If there's -- yes, correct.

12 A I did not know that show ownership was  
13 the subject of these proceedings. I thought it  
14 was retransmission royalties?

15 Q My question is if the owner of the  
16 show is supposed to be indicated, then should not  
17 AFI be indicated with regard to this particular  
18 show?

19 MS. PLOWNICK: Objection. What is  
20 supposed to be, clarify please the question.

21 JUDGE BARRETT: Objection sustained.  
22 We're not dealing with ownership here Mr.

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1 Boydston.

2 MR. BOYDSTON: Okay. There's no  
3 dispute that AFI is the owner of this particular  
4 property a Tribute to Barbara Streisand, correct?

5 MS. SAUNDERS: There's not dispute  
6 that AFI is the producer.

7 MS. PLOWNICK: Objection. We're not  
8 dealing with -- the Judge just ruled we're not  
9 dealing with ownership and he's now asked her to  
10 identify the owner.

11 JUDGE BARRETT: We're done with the  
12 topic. You may be seated Ms. Plovnick.

13 MR. BOYDSTON: Thank you, Your Honor.  
14 Let's look at Exhibit 52.

15 MS. SAUNDERS: Which -- who's Exhibit  
16 52? Your Exhibit 52?

17 BY MR. BOYDSTON:

18 Q I'm sorry, 352. I'm sorry.

19 A Oh, I see. Okay.

20 Q Actually before we do that -- well,  
21 let's see here. Let's go to 345 briefly before  
22 we go to 352.

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1 Now and my question is to you will be  
2 as follows and it may require you to look through  
3 345. With regard to --

4 JUDGE BARRETT: 345 is marked as  
5 restricted.

6 MR. BOYDSTON: Oh, I'm sorry.

7 JUDGE BARRETT: Those of you in the  
8 courtroom who have not signed the confidentiality  
9 agreement, please wait out in the anteroom, thank  
10 you.

11 MR. BOYDSTON: Now I believe you  
12 testified that you attempted to address  
13 everything that's been brought up with regard to  
14 these various certifications in terms of  
15 demonstrating the rights to collect the materials  
16 that are represented in these certifications,  
17 correct?

18 MS. PLOWNICK: Objection. That  
19 mischaracterizes Ms. Saunders' testimony.

20 MR. BOYDSTON: Let me ask it in a  
21 different way.

22 MS. PLOWNICK: Thank you.

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1 MR. BOYDSTON: Now in 345, there is  
2 reference to Buck McNeely, The Outdoorsman.

3 MS. SAUNDERS: I'm sorry, 345 is Phil  
4 Hochberg's Transworld International. Do you mean  
5 347?

6 MR. BOYDSTON: Yes, I do, I apologize.

7 MS. SAUNDERS: Okay.

8 JUDGE STRICKLER: And we're not on  
9 345?

10 MR. BOYDSTON: No, I'm sorry. Give me  
11 just a second. I don't think it's 347 either.  
12 I'm sorry. Let's look at 352.

13 MS. SAUNDERS: Is this one restricted?

14 MR. BOYDSTON: No, it's not. We can  
15 invite the gallery back in.

16 MS. SAUNDERS: Okay.

17 MR. BOYDSTON: While everyone's filing  
18 back in, I'd like to ask that this be marked as  
19 Exhibit 127.

20 (Whereupon, the above-referred to  
21 document was marked as 127 Exhibit No.  
22 127 for identification.)

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1 MR. BOYDSTON: Take a look at this.  
2 I'll represent to you that this is an excerpt if  
3 you will of the MPAA production in response to  
4 the Judge's Order of July 30, 2014.

5 MS. SAUNDERS: Um-hum.

6 MR. BOYDSTON: Judge Strickler, this  
7 would be sort of a miniature version in the sense  
8 of what we discussed, or what you had mentioned  
9 yesterday. It is not what you'd said, but it's  
10 similar. It's not as complete.

11 JUDGE STRICKLER: Okay.

12 BY MR. BOYDSTON:

13 Q And I'd ask you to look at the second  
14 page, which is numbered 64 and it includes at the  
15 bottom several entries for Transworld  
16 International. And I'm concerned with the last  
17 two.

18 And then next half dozen or so  
19 following on the following page which reference  
20 Healthy Living Parenting Beyond, 10, 11, 7 and 8,  
21 9 and then Healthy Living Today's Health.

22 A Um-hum.

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1 Q Now, my understanding is based upon it  
2 being in this document, that these are programs  
3 for which the MPAA is making claim, correct?

4 MR. MacLEAN: Objection. Your Honor,  
5 is IPG 127 being offered into evidence?

6 MR. BOYDSTON: Right now it's just for  
7 reference to refresh her recollection as to what  
8 was in the large document.

9 JUDGE BARRETT: If it's just to  
10 refresh her recollection --

11 MS. PLOVICK: Well, I have an  
12 objection also too. This does not identify  
13 particular royalty year at issue. And I mean,  
14 the information that we produced that I believe  
15 this was drawn from, would have been linked to  
16 particular royalty years.

17 So you could easily connect them with  
18 the certification that -- well you know, there  
19 are different titles for each royalty year.

20 JUDGE BARRETT: Ms. Plovnick, it  
21 hasn't been offered yet.

22 MS. PLOVICK: All right.

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1 MR. BOYDSTON: For clarification, it  
2 is identified. And it is -- and there's a hand  
3 -- it's handwritten, but it is identified in the  
4 lower left hand corner. The pages I was asking  
5 about concern the royalty year 2004.

6 JUDGE STRICKLER: Whose handwriting is  
7 2004?

8 MR. BOYDSTON: That is Mr. Galaz's  
9 handwriting. And then if you'd -- at the third  
10 page, you'll see the handwritten numbers 2005.  
11 And that represents the 2005 broadcast year.

12 So I believe my question before the  
13 objections was based on this -- these pages that  
14 I reference and the references to Transworld  
15 International and Healthy Living Today, Today's  
16 Health and Healthy Living Parenting and Beyond,  
17 is it true that this indicates that the MPAA is  
18 making a claim for those programs in 2004?

19 MR. MacLEAN: Objection Your Honor.  
20 I thought this Exhibit was being used to refresh  
21 recollection?

22 MR. BOYDSTON: It still is.

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1 JUDGE BARRETT: Well then --

2 MR. BOYDSTON: I was just stating my  
3 question.

4 JUDGE BARRETT: If you claim it had,  
5 it would first help to establish that she has  
6 knowledge. Then show her this, ask her if this  
7 refreshes her a bit. That she has knowledge that  
8 she cannot recall. Then find out if this helps  
9 to refresh her recollection.

10 But not ask if based upon this  
11 document she would testify to something.

12 MR. BOYDSTON: Understood your Honor.  
13 I apologize for the shortcut. We've talked about  
14 this a lot. And that's why I made an assumption  
15 I shouldn't have.

16 MS. PLOVICK: Your Honor, I think  
17 MPAA Exhibit 345 would certainly help Ms.  
18 Saunders refresh her recollection if they turn to  
19 the certification to cover the years.

20 MR. BOYDSTON: Well, I'm asking  
21 something different if I may?

22 JUDGE BARRETT: You may. Just --



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1 MR. BOYDSTON: So let me do what you  
2 suggested Your Honor and make the foundation.

3 JUDGE BARRETT: Well, I didn't suggest  
4 that I think it's going to be into evidence.

5 MR. BOYDSTON: I'm sorry. I'm sorry,  
6 Your Honor.

7 Ms. Saunders, we have -- we've been --  
8 the questions and answers have been asked about  
9 the spreadsheet that was provided by the MPAA in  
10 response to the Judge's Order of July 30, 2014.  
11 Do you recall that?

12 MS. SAUNDERS: I do.

13 BY MR. BOYDSTON:

14 Q And do you recall the big spreadsheet  
15 that was produced that you said at great cost and  
16 great hassle, was another word.

17 A Yes. Well, not for me, but yes.

18 Q In response thereto. Do you recall  
19 that spreadsheet?

20 A Yes, yes.

21 Q Yes or not?

22 A Yes, I do.

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1 Q Okay. And do you have something there  
2 that you would, yes?

3 A I'm sorry?

4 Q You have familiarity with it, yes?

5 A I'm sorry, with this that you just  
6 handed me, Exhibit?

7 Q No. Do you have familiarity with the  
8 big spreadsheet that was prepared in response to  
9 the Judge's Order?

10 A Yes, yes, yes. Okay, I'm sorry.

11 Q Okay. And do you recall that that big  
12 spreadsheet included claims for Transworld  
13 International, Inc., for Healthy Living Parenting  
14 and Beyond and Healthy Living Today's Health?

15 A Okay.

16 Q Okay, so the question is did you  
17 recall that?

18 A Not off of the top of my head I don't.  
19 But I believe that we could compare with the  
20 attachments or the Appendices to my testimony,  
21 respectively A and B and confirm whether and for  
22 what years this claimant and those shows are

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1 claimed by MPAA.

2 Q I appreciate that. I'm just asking  
3 now about the spreadsheet. Do you recall that  
4 the spreadsheet includes those claims?

5 A I do not. I recall the spreadsheet  
6 was prepared and I have seen the first page which  
7 is attached to one of these many Exhibits. But I  
8 do not recall that.

9 MR. BOYDSTON: Very reasonable. It's  
10 a big document. Now, Your Honor, I'd like to  
11 refer the witness to Exhibit 127 to attempt to  
12 refresh her recollection.

13 JUDGE STRICKLER: You mean IPG 127?

14 MR. BOYDSTON: Yes. IPG 127. It's  
15 not been admitted yet. No, this is what I just  
16 handed you. This is the -- Ms. Saunders?

17 MS. SAUNDERS: Yes?

18 MR. BOYDSTON: This is the --

19 MS. SAUNDERS: Oh, I'm sorry. I'm  
20 sorry. Okay. Yes, sorry. Got it, okay.

21 MS. PLOWNICK: I thought we were just  
22 looking at that and now he's refreshing her

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1 recollection. I mean, I'm really -- I'm totally  
2 confused as to what's being refreshed?

3 MR. BOYDSTON: I'm trying to refresh  
4 --

5 JUDGE BARRETT: Her recollection of  
6 the contents of the spreadsheet Ms. PLOWNICK.

7 BY MR. BOYDSTON:

8 Q Now, looking down here at the second  
9 page of this Exhibit, which is marked as 64 and  
10 the third page marked as 65, does that refresh  
11 your recollection that the spreadsheet indicated  
12 these years making a claim for Transworld  
13 International, Inc. on programs Healthy Living  
14 Parenting, several of them, and Healthy Living  
15 Today's Health, several of them?

16 A It does not Mr. Boydston, because  
17 first of all the certification you've asked me to  
18 look at under 345 refers only to cable and  
19 satellite royalties for year 2003. The  
20 spreadsheet you've handed me, Exhibit 127 refers  
21 to royalties starting in 2004, '05 through '09.

22 What is relevant, and I thought we had

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1 established this in chapter and verse yesterday,  
2 is -- are the shows that are attached to my  
3 testimony in Exhibits B, those are the titles in  
4 -- designated by royalty year, for which we are  
5 asserting a claim in this proceeding.

6 This Excel spreadsheet, Exhibit 127  
7 does not -- is not the representation to my  
8 knowledge, I cannot tell you whether this is a  
9 compendium of every title for every year that we  
10 have claimed. I can tell you that Exhibit B is.

11 JUDGE STRICKLER: I just want to make  
12 sure I'm following you Ms. Saunders. You said  
13 Exhibit 345 does not refer to calendar year 2004.  
14 But it seems to me that it covers 2003 and 2004  
15 and perhaps other years as well.

16 MS. SAUNDERS: Well, I apologize Your  
17 Honor, it does. I did not see the other  
18 certifications of entitlement. Yes, there's one  
19 for '03, there's one for '04. And it does have  
20 on these certification reports, Today's Health.

21 And I'm a little -- maybe I'm using  
22 the thread about what we're talking about.

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1 JUDGE STRICKLER: Maybe he needs to --  
2 now that you acknowledge that those documents are  
3 there, maybe he can ask you the question again.

4 MS. SAUNDERS: Yes. Yes.

5 JUDGE STRICKLER: Mr. Boydston do you  
6 want to ask her that again?

7 MS. SAUNDERS: Now let me see if my --

8 MR. BOYDSTON: Yes, thank you, Your  
9 Honor.

10 My question again is very specific Ms.  
11 Saunders.

12 MS. SAUNDERS: Um-hum.

13 BY MR. BOYDSTON:

14 Q Right now I'm really not asking you  
15 about 345, okay.

16 A Okay.

17 Q I'm asking you about the spreadsheet.  
18 And if we had the spreadsheet here it would be  
19 like this in its complete format, right?

20 A Um-hum.

21 Q And that would be kind of hard. So  
22 what I've provided here in Exhibit 127 is just

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1 the relevant pages I want to ask you about.

2 And my original question was in that  
3 big enormous thing, did it not include Transworld  
4 International claims for Healthy Living Parenting  
5 and Beyond and Today's Health. And you said I  
6 can't remember. Which is very reasonable in a  
7 big document like that.

8 So now I have provided you with just  
9 the relevant pages --

10 A You've showed me.

11 Q Now I'm just providing you the  
12 relevant pages --

13 A Yes, okay.

14 Q Of Exhibit 125. And my question is  
15 does that refresh your recollection that the big  
16 giant behemoth does include the claims we see  
17 here on page 64 and 65?

18 A I have no recollection about the  
19 behemoth Exhibit to which you've just referred  
20 other than it exists. And when I look at the  
21 certification report here in 345 for royalty year  
22 2004, I do see, and I can confirm that MK has

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1 asserted a claim for Healthy Living, Today's  
2 Health, 2, 3, 4, 5, 6, 7 and 8.

3 I do not see in 2004, despite the fact  
4 that it appears on this spreadsheet that you have  
5 just handed me as 127, I do not see any reference  
6 to the show -- the series title Parenting and  
7 Beyond.

8 And actually -- yes, 8 and 7 and 6,  
9 Today's Health, 6, 7, 8, appear on the 127. And  
10 they appear in my 2004 certification report.

11 Q I'm sorry, when you said 6, 7, 8,  
12 you're referring to Today's Health?

13 A Yes. Today's Health, yes.

14 Q But there -- I'm looking at Exhibit  
15 345, is not --

16 A Oh, I'm so sorry, you're absolutely  
17 right. On the very next page -- it would help if  
18 you would point me to these things Mr. Boydston.

19 Yes, I see that we have a claim here  
20 for Healthy Living Parenting and Beyond 4, 5, and  
21 6.

22 Q Okay. But not 7 or 8 or 9.



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1 A Or 10 or 11 or all the ones you have  
2 on --  
3 Q Now, so it's quite clear that the  
4 behereth if you will, the document produced in  
5 response to the Judge's July 30 Order, is not  
6 consistent with the certifications, is it?  
7 MR. MacLEAN: Objection.  
8 MS. PLOVNIK: Objection.  
9 MR. BOYDSTON: It must have been a  
10 good one.  
11 MS. PLOVNIK: Yes. Well, I have a  
12 couple here. First, this document --  
13 MR. BOYDSTON: Which document?  
14 MS. PLOVNIK: I'm looking at IPG  
15 Exhibit and I don't know what Exhibit you have --  
16 MR. BOYDSTON: 127.  
17 JUDGE BARRETT: Which is not admitted.  
18 MS. PLOVNIK: Which is not admitted.  
19 Well, all right, well that got into another  
20 objection.  
21 MR. MacLEAN: That's my objection.  
22 MS. PLOVNIK: I thought I missed

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1 that. All right, well so anyway this -- I'm not  
2 clear exactly which royalty years are being  
3 addressed on which page. I know there's some  
4 handwritten notes and they're kind of clipped  
5 together and I'm not sure if I'm a hundred  
6 percent clear.  
7 But this hasn't impeached Ms. Saunders  
8 because --  
9 JUDGE BARRETT: It was only offered to  
10 refresh recollection. And I think Ms. Saunders  
11 has testified at least twice that it does not  
12 refresh her recollection.  
13 MS. PLOVNIK: So I -- well, I object  
14 to its admission and I --  
15 JUDGE BARRETT: It hasn't been  
16 offered. Has it?  
17 MR. BOYDSTON: Not yet.  
18 JUDGE BARRETT: Okay.  
19 MS. PLOVNIK: Well also, I object to  
20 the question that he asked her to make. Because  
21 it -- it misconstrued -- I mean, --  
22 MR. BOYDSTON: Your Honor, let --

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1 MS. PLOVNIK: I'm confused as to what  
2 all he is looking at here. And because if you  
3 simply look through Exhibit 345 as Ms. Saunders  
4 was trying to do, all of these titles are here.  
5 MS. SAUNDERS: I just found it. I  
6 just found 10, 11 and all the other's  
7 characterizing the obligation.  
8 MS. PLOVNIK: So it's really -- it's  
9 really -- so to me, I'm confused. I'm sure she's  
10 confused. And I'm not sure that anything's  
11 either being refreshed or that -- I think she's  
12 -- anyway. So --  
13 JUDGE BARRETT: Overruled. Well go  
14 ahead Mr. Boydston.  
15 MR. BOYDSTON: Okay. Ms. Saunders I  
16 believe you may have found something additional?  
17 MS. SAUNDERS: Yes I did. I just see  
18 on another page of the certification report under  
19 Exhibit 345 that the Healthy Parenting and  
20 Beyond, there are many additions of Today's  
21 Health and Parenting and Beyond claimed by this  
22 claimant.

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1 JUDGE STRICKLER: What page are you  
2 on?  
3 MS. SAUNDERS: I'm sorry, Your Honor.  
4 I am on -- well, I was on a couple. Let's see, I  
5 was on --  
6 JUDGE STRICKLER: Just the numbers  
7 will do.  
8 MS. SAUNDERS: C04426 and C04426 and  
9 C04991. There might be another one, hang on.  
10 JUDGE STRICKLER: So now you're going  
11 into 2005 as well, right?  
12 Ms. SAUNDERS: Oh yes, I'm up to 2000  
13 -- yes, that was through '05, that's correct. I  
14 don't see -- at first glance I don't see any  
15 other references in 2006 for that particular  
16 title.  
17 MR. BOYDSTON: Yes, let me stop you  
18 there because I'm not interested in that one in  
19 just a moment. Let's just focus on 2004 in  
20 Exhibit 345 and Exhibit -- and 2004 in Exhibit  
21 127.  
22 And Exhibit 127, the pages relevant to

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1 2004 are the first one, where it's marked 2004  
2 and the second and the third. Not the fourth  
3 which is marked 2005 or anything after that.

4 MS. SAUNDERS: Okay.

5 MR. BOYDSTON: Which would clear up  
6 any confusion about the year I hope.

7 MS. SAUNDERS: Okay.

8 MR. BOYDSTON: Now, on the bottom of  
9 page 64, Parenting and Beyond --

10 JUDGE BARRETT: Mr. Boydston, this  
11 Exhibit is not admitted. We're not going to  
12 testify to the contents unless it's offered and  
13 admitted.

14 MR. BOYDSTON: Well, I'll offer it for  
15 admission Your Honor.

16 MS. PLOVNIK: I object on all the  
17 basis I already articulated. It's -- I mean it's  
18 not clear to me that this document is reflective  
19 of what he -- that the foundation's been laid.  
20 That it reflects what he's purported it is. What  
21 years it even covers. They're all not clear.

22 JUDGE BARRETT: Sustained.

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1 MR. BOYDSTON: I'll ask one last  
2 question on this because I'm confused as what the  
3 answers may have been. And it may have been  
4 elicited perfectly and I just don't remember.  
5 And if so I apologize. And so I want to make  
6 sure I get it right.

7 Is it your understanding that the  
8 spreadsheet produced in response to the July 30  
9 Order is consistent with the program lists in  
10 document 345 and others similar to it?

11 MS. PLOVNIK: Objection, asked and  
12 answered.

13 JUDGE BARRETT: Overruled. Let's get  
14 a clear and direct answer to this clear question.

15 MS. SAUNDERS: I directed my counsel  
16 to prepare the electronic file that is known as  
17 MPAA Owner Title 2000 to 2009 drawing from the  
18 hard copy certification reports that we keep as  
19 business records that have been produced to you  
20 in the discovery.

21 I did not prepare that Excel  
22 spreadsheet. If you're asking me if it's

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1 possible there is a mistake in it? I would --  
2 it's possible. It's possible.

3 But yes, it is supposed to be -- the  
4 Excel spreadsheet is supposed to be a compilation  
5 of the certification reports and the titles that  
6 we claim, excepting that of course as I  
7 mentioned, the hard copy certifications provide  
8 additional information and deletions in terms of  
9 titles.

10 So they are quite valuable as a  
11 reference, which is why we produced them.

12 BY MR. BOYDSTON:

13 Q Okay. I appreciate that answer. I  
14 think it helps clarify the record. And I hate to  
15 do this in a way, but I have to. So is the  
16 answer yes, it is the same, or no, it's not?

17 A You are asking me to tell you -- let  
18 me be sure I understand. You are asking me to  
19 tell you under oath that the Excel spreadsheet  
20 prepared by my lawyers called MPAA Owner Title  
21 2000 to 2009 is in fact a perfect copy, or a  
22 perfect record of every title to which MPAA has

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1 certified entitlement to claim royalties in this  
2 proceeding.

3 And I can tell you with a distinct  
4 certainty that I cannot.

5 Q Fair enough. Thank you. Please  
6 reference Exhibit 336. And in conjunction with  
7 that, please take a look at what was marked as  
8 Exhibit 125, which are several Copyright Office  
9 -- it's not, it's a separate document.

10 A I'm sorry, okay. Okay.

11 Q There are a copy and printouts from  
12 the copyright website.

13 MS. PLOVNIK: Your Honor, this line  
14 of questioning, he already did this once and Your  
15 Honor wouldn't allow this. I'm going to object  
16 to it again on the same basis.

17 MR. BOYDSTON: But Your Honor I don't  
18 believe I referenced 125 in any of my questions  
19 to Ms. Saunders. I referenced them in regards to  
20 questions to Mr. Galaz.

21 JUDGE BARRETT: Overruled. I'm not  
22 sure where we are on this. But go ahead Mr.



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1 Boydston.  
 2 MS. SAUNDERS: I'm sorry, I don't --  
 3 MR. BOYDSTON: May I approach Your  
 4 Honor?  
 5 JUDGE BARRETT: You may.  
 6 MS. SAUNDERS: I can't find 125. Is  
 7 it in this one?  
 8 MR. BOYDSTON: It's not in the book.  
 9 MS. SAUNDERS: Oh.  
 10 MS. WHITTLE: It is in the binder  
 11 isn't it?  
 12 MR. BOYDSTON: Oh, it was put in the  
 13 binder. Oh good. Thank you Ms. Whittle.  
 14 Now, we're kind of asking you about  
 15 both Exhibits, so if you can juggle the tab.  
 16 MS. SAUNDERS: Um-hum. Um-hum.  
 17 BY MR. BOYDSTON:  
 18 Q Okay. Now first looking at Exhibit  
 19 130 -- or excuse me, 336.  
 20 A Yes.  
 21 Q On the second page under property  
 22 title, the first title is Action Man. The second

1 deference.  
 2 MS. PLOWNICK: I mean, we acknowledge,  
 3 these are web searches of the public records.  
 4 They're not actually Copyright Officer  
 5 registrations. But we don't dispute that they  
 6 come off the internet and that they are searches  
 7 of a public search engine.  
 8 You know, I -- but --  
 9 JUDGE BARRETT: They are what they  
 10 purport to be.  
 11 MS. PLOWNICK: They are what they  
 12 purport to be. I mean, you know, we really  
 13 object on relevance grounds I believe here.  
 14 And in our other further objection  
 15 that we articulated yesterday is that counsel is  
 16 trying to now address additional titles that were  
 17 not addressed in the written rebuttal statement  
 18 of IPG that was filed on October 15. They're  
 19 trying to attack additional titles or append  
 20 them.  
 21 And our understanding was you had to  
 22 raise all your claims objections by October 15

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1 title is Angela Anaconda. Do you see that?  
 2 A Yes.  
 3 Q Now look at the first page of Exhibit  
 4 125 and under title it says Angela Anaconda,  
 5 doesn't it?  
 6 MR. MacLEAN: Objection. Your Honor,  
 7 at least according to our records over here, IPG  
 8 125 is not in evidence.  
 9 MR. BOYDSTON: You know, Your Honor,  
 10 I think that might be correct.  
 11 MS. PLOWNICK: I think Your Honor  
 12 actually may have rejected it, but I'm not sure.  
 13 MR. BOYDSTON: It was rejected. I was  
 14 trying to admit it by Mr. -- I was trying to  
 15 admit it -- yes, I think I tried to admit it with  
 16 Mr. Galaz.  
 17 Your Honor, I'd like to move to admit  
 18 Exhibit 125 based on judicial notice. This is a  
 19 public record obtained off the Copyright website,  
 20 which is maintained by the Copyright Office. And  
 21 is a well respected governmental agency.  
 22 I think this could be accorded due

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1 and he didn't do that with regard to additional  
 2 titles he's raising now for the first time in  
 3 MPAA's rebuttal to IPG.  
 4 JUDGE BARRETT: Okay. Mr. Boydston  
 5 can you respond to the objection that this is  
 6 introducing objections to claims that were not  
 7 previously identified?  
 8 MR. BOYDSTON: Yes. This is in  
 9 rebuttal to the witnesses testimony that the  
 10 programs claimed in the certifications are  
 11 rightly claimed and owned by the MPAA's agents  
 12 and their assigns.  
 13 The 336 purports to say that Angela  
 14 Anaconda, the rights to Angela Anaconda are held  
 15 by -- I'm sorry, I can't read the title of the  
 16 entity that this is for. It is ABC Family  
 17 Worldwide. When in fact the first page of  
 18 Exhibit 125 indicates otherwise.  
 19 MS. PLOWNICK: Your Honor, that would  
 20 be surrebuttal. Because these documents were  
 21 part of MPAA's rebuttal to IPG. Now this is a  
 22 surrebuttal to the rebuttal.

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1 MR. BOYDSTON: No, we -- and in our  
2 own initial rebuttal statement, we challenged all  
3 of the ABC titles. This is a specific --  
4 JUDGE BARRETT: The objection is  
5 overruled. 125 is admitted.  
6 (Whereupon, the above-referred to  
7 document was received into evidence as  
8 1PG Exhibit No. 125.)  
9 MR. BOYDSTON: Thank you, Your Honor.  
10 Now, Ms. Saunders, taking a look at  
11 Exhibit 125, as I said, the title says Angela  
12 Anaconda. And the party, number one says Decode  
13 Entertainment. Would you agree with me?  
14 MS. SAUNDERS: Yes.  
15 MR. BOYDSTON: Now, taking a look at  
16 the second page of -- well, no let's go first to  
17 336. With regard to 336 on the -- it will be the  
18 third page of 336 about three quarters of the way  
19 down the list it says --  
20 JUDGE BARRETT: Excuse me, 336 is a  
21 restricted Exhibit.  
22 MR. BOYDSTON: Oh, I'm sorry, Your

1 then have to face the highway patrol.  
2 MR. BOYDSTON: May I continue Your  
3 Honor?  
4 JUDGE BARRETT: Mr. Boydston, you may.  
5 BY MR. BOYDSTON:  
6 Q You see where it references Power  
7 Rangers Lightspeed Rescue, Power Rangers Lost  
8 Galaxy?  
9 A Oh, I'm so sorry, I -- oh, are we on  
10 336? I'm sorry.  
11 Q On 336 --  
12 A Hang on.  
13 Q Third page. The one page down.  
14 A Yes, I see Power Rangers Lightspeed  
15 Rescue and Lost Galaxy, yes.  
16 Q Now looking at the second page of  
17 Exhibit 125.  
18 A Um-hum.  
19 Q Now you see that it says title Power  
20 Rangers and then it says claimant Saban  
21 Entertainment?  
22 A Yes.

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1 Honor.  
2 JUDGE BARRETT: Ms. Saunders, I know  
3 you have a travel schedule. How much longer are  
4 you going to be Mr. Boydston?  
5 MR. BOYDSTON: Not very. This is  
6 about the last thing I have to cover.  
7 JUDGE BARRETT: Okay. And Mr.  
8 MacLean, are you going to have questions for Ms.  
9 Saunders?  
10 MR. MACLEAN: No cross for this  
11 witness.  
12 MS. PLOWNICK: A very brief redirect.  
13 JUDGE BARRETT: Is it in everyone's  
14 interest for us to continue and then delay our  
15 noon break?  
16 MR. BOYDSTON: I think I can take  
17 about 45 seconds.  
18 JUDGE BARRETT: Can everyone bear out  
19 if we do that?  
20 MR. MACLEAN: Absolutely.  
21 JUDGE BARRETT: I think it's better  
22 when having Ms. Saunders come back at 1:00 and

1 Q Please take a look at 336, the same  
2 Exhibit we were on.  
3 A Um-hum.  
4 Q And --  
5 JUDGE STRICKLER: Why don't you just  
6 say the Bates Number, it's a lot easier that way.  
7 MR. BOYDSTON: Yes, I will. I'm  
8 sorry, I'm looking for it. Oh, here we go.  
9 Bates Number 04666 and I believe there it  
10 references where on Earth is Carmen Sandiego,  
11 correct?  
12 MS. SAUNDERS: Okay, hold a minute.  
13 I'm sorry, Mr. Boydston, I'm not finding that.  
14 Can you tell me the --  
15 BY MR. BOYDSTON:  
16 Q Yes, it's --  
17 A Oh, give me the Bates Number again.  
18 0466?  
19 Q 04666  
20 A Thank you. Thank you, thank you.  
21 Okay. Where on Earth is Carmen Sandiego? Yes.  
22 Q Okay. And then looking on Exhibit



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1 125, the last page of Exhibit 125. You see it  
2 says title Where on Earth is Carmen Sandiego?

3 A Yes.

4 Q And copyright claimant is listed as  
5 DFC Productions, LLP, correct?

6 A Yes.

7 MR. BOYDSTON: Thank you. Nothing  
8 further Your Honor.

9 MS. PLOWNICK: So Mr. MacLean, you  
10 didn't have additional cross did you?

11 MR. MacLEAN: Thank you, but no.

12 MS. PLOWNICK: Okay. I just wanted to  
13 make sure I wasn't jumping the gun. Okay.

14 JUDGE STRICKLER: Are we out of  
15 restricted?

#### 16 REDIRECT EXAMINATION

17 MS. PLOWNICK: I think we -- I mean I  
18 might -- I'm not really going to go into the  
19 substance I don't think of anything. If I do,  
20 I'll try to let you know. So I think we're out.

21 Okay. Let me get my track here. All  
22 right. So Ms. Saunders, could you please start

1 you anticipated my question. So it was what is  
2 Exhibit 5?

3 A Yes.

4 Q And you answered this is an agreement  
5 between Fintage and Televisa.

6 A It's a representation agreement, yes,  
7 between those two parties.

8 Q All right. And then -- and it's dated  
9 as of January 1, 2003?

10 A January 1, 2003, yes.

11 Q All right. Now if you flip to Exhibit  
12 6 and that is also still within MPAA Exhibit 346.

13 A Yes, yes.

14 Q What is that document?

15 A This is a secondary rights deal memo  
16 between Fintage Publishing and TV Azteca.

17 Q And that's dated?

18 A March 1, 2004.

19 Q Okay. And then flip to Exhibit 7 to  
20 the Fintage letter.

21 A Yes. Representation agreement between  
22 EGEDA and Fintage dated September 19, 2001.

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1 With you were asked some questions about MPAA  
2 Exhibit 346 by Mr. Boydston.

3 MS. SAUNDERS: Yes, yes. Oh, here it  
4 is.

5 BY MS. PLOWNICK:

6 Q And so if you could look at that  
7 letter and flip to what's attached as Exhibit 5.

8 A Okay.

9 Q To that letter, which is in MPAA  
10 Exhibit 346.

11 A I'm going as fast as I can turn the  
12 pages. Hold on. Okay, I'm up to 7.

13 MR. BOYDSTON: This is 345 A?

14 MS. SAUNDERS: I have it. I have it,  
15 yes.

16 MS. PLOWNICK: This is 346, I'm sorry.  
17 346 is just the Fintage letter.

18 MS. SAUNDERS: This is the  
19 representation agreement between Fintage and  
20 Televisa.

21 BY MS. PLOWNICK:

22 Q So just -- so that was actually my --

1 Q So Mr. Boydston asked you I believe,  
2 I'm trying -- there were a lot of questions here.  
3 But he asked you whether there was an agreement  
4 in the record between Fintage and EGEDA?

5 A Yes.

6 Q And I remember what your answer was.  
7 But is your -- do you now have the answer to that  
8 question?

9 A Yes, there is a representation  
10 agreement, yes in the record, yes.

11 Q Does it refresh your recollection?

12 A Yes, yes.

13 Q So, and that would be Exhibit 7.

14 A That is the Exhibit 7.

15 Q To the Fintage.

16 A I apologize for not reaching quicker  
17 when Mr. Boydston was questioning me.

18 JUDGE STRICKLER: It's on the record  
19 as MPAA's Exhibit 7 to Exhibit 346.

20 MS. PLOWNICK: Thank you, it is --

21 MS. SAUNDERS: Yes.

22 MS. PLOWNICK: Thank you, Your Honor.

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1 It is Exhibit 7 to MPAA Exhibit 346.  
 2 MS. SAUNDERS: Correct.  
 3 MS. PLOWNICK: Which is a letter from  
 4 tintage to Ms. Saunders.  
 5 MS. SAUNDERS: Yes.  
 6 BY MS. PLOWNICK:  
 7 Q Okay. Now, let's go to the next  
 8 Exhibit, MPAA Exhibit 347.  
 9 A Um-hum.  
 10 Q Mr. Boydston also asked you about this  
 11 Exhibit during his cross. If you flip to the  
 12 second page of the letter, which is the first  
 13 document in MPAA Exhibit 347, could you read the  
 14 very last sentence of numbered paragraph 2 into  
 15 the record?  
 16 A We wish to clarify that Screenrights  
 17 is not -- underline not -- asserting a claim for  
 18 royalties for IPG's The Outdoorsman with Buck  
 19 McNeely.  
 20 Q Do you know if Screenrights had  
 21 originally certified the title The Outdoorsman  
 22 with Buck McNeely for any royalty years?

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1 A I do not know if they have.  
 2 Q Would looking at the certification  
 3 refresh your memory?  
 4 A Oh, I'm sorry, yes.  
 5 Q So --  
 6 A Yes, it would. Where is that  
 7 certification?  
 8 Q Let me find it. And perhaps -- I  
 9 believe it's Exhibit 338. And I think we looked  
 10 at this yesterday, but it was --  
 11 A Oh, yes. Okay.  
 12 Q It was on the very last page of that  
 13 Exhibit actually.  
 14 A Of going to royalty 2009?  
 15 Q Going to year 2009.  
 16 JUDGE PECCE: Can you give me the  
 17 Bates Number please?  
 18 MS. PLOWNICK: I can try. It looks  
 19 like it's MPAA-S-0912 and then there's a whole  
 20 punch. And so it might be 123?  
 21 JUDGE BARRETT: It is. I think we  
 22 established that.

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1 MS. PLOWNICK: Yes.  
 2 MS. SAUNDERS: Yes. In fact it does  
 3 show Screenrights as a claimant for The  
 4 Outdoorsman with Buck McNeely.  
 5 BY MS. PLOWNICK:  
 6 Q So, would this be an example of a  
 7 claimant making a mistake?  
 8 A This is a mistake, yes. And  
 9 claimants, we try our level best as do our  
 10 claimants to ensure that they accurately claim  
 11 all the titles that they should.  
 12 In time -- from time to time claimants  
 13 make mistakes. That is unfortunately the case.  
 14 Q Right. So and you -- so because on  
 15 the certification --  
 16 MR. BOYDSTON: Your Honor, I'm so  
 17 sorry. I just noticed that this was restricted.  
 18 JUDGE BARRETT: Oh, it is. I'm sorry.  
 19 MS. PLOWNICK: I'm sorry. And we did  
 20 go into some, I'm sorry, Your Honor. So -- and I  
 21 should have said something.  
 22 So if you could please leave the room.

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1 Because we did go in -- and I apologize. I'm  
 2 trying to go as fast as I can to get Ms. Saunders  
 3 out.  
 4 JUDGE STRICKLER: Before you ask the  
 5 question, Ms. Saunders you said claimants  
 6 sometimes make mistakes.  
 7 MS. SAUNDERS: Um-hum, yes.  
 8 JUDGE STRICKLER: What if anything  
 9 does the MPAA do to review what the claimants  
 10 have submitted to see if there are mistakes?  
 11 MS. SAUNDERS: Well, Your Honor,  
 12 frankly we take their certification at -- we take  
 13 the certification as proof that they are entitled  
 14 to claim.  
 15 If we find subsequently that we have  
 16 distributed monies to a claimant in respect to a  
 17 title that they should not have and avert later  
 18 that they should not have received monies for.  
 19 We would recoup those monies.  
 20 JUDGE STRICKLER: So you don't -- you  
 21 don't check to see if there was a mistake unless  
 22 and until there's a dispute with regard to money



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1 that's already been distributed?  
 2 MS. SAUNDERS: Yes, that's correct,  
 3 Your Honor.  
 4 JUDGE STRICKLER: Thank you.  
 5 BY MS. PLOWNICK:  
 6 Q Now do you do any process for if you  
 7 have two claimants that claim the same title --  
 8 A Of course.  
 9 Q For example, do you take any --  
 10 A Yes. Yes.  
 11 Q Efforts to ensure accurate  
 12 distribution?  
 13 A Yes. Our representation agreement  
 14 provides for conflict resolution rules. And we  
 15 do take action in a case that a title is claimed  
 16 by more than one party. We would not distribute  
 17 the money until that conflict was resolved.  
 18 Q What would you do with the money  
 19 pending resolution of the parties?  
 20 A We would hold it in escrow.  
 21 JUDGE STRICKLER: I suppose my  
 22 question was a little broader. With regard to

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1 all of the claims that are referenced in not just  
 2 these documents, but ultimately in your  
 3 Appendices A and B, is there a quality control  
 4 activity undertaken by MPAA to make sure that  
 5 what the claimants have submitted is in fact  
 6 accurate or not?  
 7 MS. SAUNDERS: The only quality  
 8 control -- well, we of course review every  
 9 certification upon receiving it. And we -- but  
 10 we do not know, we can't judge ownership of our  
 11 claimants. We can only take their certifications  
 12 as their certifications.  
 13 And unless there is a dispute inside  
 14 of the MPAA group, we would not know that they  
 15 had made a mistake.  
 16 JUDGE STRICKLER: Thank you.  
 17 BY MS. PLOWNICK:  
 18 Q And Ms. Saunders, turning you back to  
 19 MPAA Exhibit 346 -- I'm sorry, 347, what was the  
 20 date of that letter again?  
 21 A I don't -- I'm sorry --  
 22 Q I think it's on the last page.

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1 A 47? 347?  
 2 Q 347, that's the Screenrights letter.  
 3 A Yes. That date was November 24, 2014.  
 4 Q So this would be when you were made  
 5 aware that that mistake had been made?  
 6 A Oh, yes.  
 7 Q With regard to this?  
 8 A Yes. That would have been the first  
 9 time.  
 10 Q And that was November 24 of this year?  
 11 A Yes. Yes.  
 12 Q Okay. All right, so -- all right, let  
 13 me just look -- direct your attention quickly to  
 14 --  
 15 A May I just clarify one thing for the  
 16 Court?  
 17 Q Sure.  
 18 A Because I think it's important. And  
 19 this is a misunderstanding that I encounter often  
 20 in my work.  
 21 Cable operators and satellite  
 22 operators do not pay royalties on a title by

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1 title basis. They pay on a blanket basis.  
 2 MR. BOYDSTON: Your Honor, there's no  
 3 question pending and this is a speech.  
 4 MS. SAUNDERS: It's not a speech.  
 5 It's information to the Court because the Judge  
 6 has raised a question about what we do in this  
 7 instance.  
 8 So the fact that we may have --  
 9 JUDGE STRICKLER: Do you want to rule  
 10 here?  
 11 JUDGE BARRETT: Yes, yes. The  
 12 objection is sustained. And we're aware of how  
 13 the cable --  
 14 MS. SAUNDERS: Okay.  
 15 JUDGE BARRETT: And satellite  
 16 providers pay their royalties.  
 17 MS. SAUNDERS: All right, thank you,  
 18 Your Honor.  
 19 JUDGE BARRETT: Okay.  
 20 MS. PLOWNICK: Ms. Miller I just -- I  
 21 mean sorry, Ms. Saunders, I was going to direct  
 22 you to IPG Exhibit 332, which is

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1 JUDGE STRICKLER: SDC?

2 MS. PLOWNICK: IPG Exhibit 332.

3 MS. SAUNDERS: Wait a minute, hold on

4 a second.

5 JUDGE STRICKLER: No, that can't be

6 right, Exhibit --

7 MS. PLOWNICK: No, I'm sorry, I'm

8 saying the wrong number. 32, I'm retreating.

9 IPG Exhibit 32.

10 MS. SAUNDERS: Okay, hold on a minute.

11 MS. PLOWNICK: I have so many numbers

12 that I am getting confused. I apologize.

13 MS. SAUNDERS: 32?

14 MS. PLOWNICK: IPG, it's -- the tab

15 says IPG - P-032.

16 MS. SAUNDERS: Okay, I have it.

17 MS. PLOWNICK: And this has already

18 been admitted.

19 MS. SAUNDERS: Okay.

20 MS. PLOWNICK: I believe.

21 MR. MacLEAN: In part.

22 MS. PLOWNICK: In part.

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1 MS. SAUNDERS: Are we still in

2 restricted Judge?

3 JUDGE BARRETT: No. This document is

4 not restricted.

5 BY MS. PLOWNICK:

6 Q So when you're there. Are you there?

7 A I'm there. I'm there.

8 Q Okay. So if you flip to the second

9 page into numbered paragraph 4.

10 A Um-hum.

11 Q You see reference to titles Healthy

12 Living and Healthy Living Mysteries of the Mind?

13 A I do.

14 Q Do you see any reference to Parenting

15 and Beyond?

16 A No, I do not.

17 Q Or the other -- or the -- and I'm

18 blanking on the other, but I'm thinking it was

19 Parenting Beyond or Today's Health?

20 A No, I do not.

21 Q Neither of those are referenced here,

22 are they?

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1 A No, they're not.

2 Q So, and now --

3 MR. MacLEAN: Your Honor, I said this

4 declaration was admitted in part. I was wrong.

5 This declaration was admitted in full. I just

6 wanted to clarify that.

7 JUDGE BARRETT: Okay. Thank you Mr.

8 MacLean.

9 BY MS. PLOWNICK:

10 Q So now, let me just turn -- divert

11 your attention to MPAA Exhibit 345, which is the

12 Transworld certification. And Mr. Boydston asked

13 you a lot of questions about these.

14 And I think it was clear, but in the

15 event it was -- you know, it was a little

16 confusing to me as I said a couple of times, you

17 know.

18 So can you please clarify, did

19 Transworld certify the titles Healthy Living

20 Parenting and Beyond for certain royalty years?

21 A Hold on, hold on. I know the answer.

22 Already forgotten. I'm just going to look

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1 through their certification reports here under

2 345. And I see Healthy Living Today's Health.

3 And I do see Healthy Living Parenting and Beyond.

4 Q Right. And but those titles were not

5 addressed in the Exhibit that we just looked at.

6 A No.

7 Q The IPG Exhibit.

8 A No, those titles are not addressed by

9 Ms. Millen in her declaration to IPG.

10 Q So the titles that were addressed,

11 Healthy Living and Healthy Living Mysteries of

12 the Mind, do you see those on the Transworld

13 certification? And let me just try to speed you

14 up if I can help you find it.

15 A Okay.

16 JUDGE BARRETT: I might suggest that

17 the witness look at Bates stamp 6529.

18 MS. SAUNDERS: 6529? Sure.

19 MS. PLOWNICK: Oh, yes.

20 JUDGE STRICKLER: It's the first page.

21 MS. PLOWNICK: Oh, yes. MPAA S.

22 JUDGE STRICKLER: We're on the MPAA.



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1 MS. PLOWNICK: MPAA 06529.  
 2 MS. SAUNDERS: Okay, thank you. Thank  
 3 you, Your Honor. Thank you. I do see Healthy  
 4 Living Mysteries of the Mind.  
 5 BY MS. PLOWNICK:  
 6 Q What royalty year was that?  
 7 A 2003.  
 8 Q 2003, okay.  
 9 A Yes.  
 10 Q And then do you see Healthy Living  
 11 certified for --  
 12 A Any of the other years?  
 13 Q For other -- I mean, I think that --  
 14 well, I believe Healthy Living Mysteries of the  
 15 Mind was certified for 2003 only. But you can  
 16 confirm.  
 17 A That is the only one I see so far of  
 18 Healthy Living -- excuse me Mysteries of the  
 19 Mind. I do not see -- I'm up to 2006, hold on.  
 20 No. I do not see it again.  
 21 Q And then if you look at what's been  
 22 Bates stamped MPAA-C-04428. I believe Healthy

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1 Living by itself is certified as to 2004 cable.  
 2 Can you please confirm?  
 3 A As to what year, I'm sorry?  
 4 Q 2004 cable and satellite actually have  
 5 '04 too.  
 6 A Okay. I actually only see Healthy  
 7 Living Today's Health and Healthy Living  
 8 Parenting and Beyond in the 2004 cable and  
 9 satellite certification unless you put --  
 10 Q If you keep flipping I believe,  
 11 MPAA-C-004428. And then the last number -- I  
 12 don't know if it's --  
 13 A Bates stamps are not exactly in order.  
 14 Q Sorry.  
 15 A So I'm not -- 00425, 7, 8. Okay, I'm  
 16 sorry. Say it again? Oh, yes. Yes. Yes.  
 17 2004, I apologize, Healthy Living is on the next  
 18 to last page I think of that certification report  
 19 all by itself.  
 20 Q And those same titles were the ones  
 21 that Mr. Hochberg addressed in MPAA Exhibit 352,  
 22 which is his letter to you?

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1 A Um-hum.  
 2 Q Regarding Healthy Living Mysteries of  
 3 the Mind.  
 4 A Yes. In his letter he addresses  
 5 Healthy Living Mysteries of the Mind and Healthy  
 6 Living. And he specifies the royalty year. But  
 7 he confirms the certifications that we have just  
 8 reviewed and looked at.  
 9 Q Yes. All right. Now, all right. So,  
 10 Ms. Saunders, let's turn to MPAA 336.  
 11 A 336, okay.  
 12 Q Now Ms. Saunders, Mr. Boyoston showed  
 13 you some public searches of the copyright records  
 14 for certain titles.  
 15 A Um-hum.  
 16 Q And you talked about one of those with  
 17 regard to DragonBall Z earlier. But you know, he  
 18 showed them to you and he compared them with this  
 19 document.  
 20 Do you have any -- having reviewed  
 21 those documents, do you, based on your personal  
 22 knowledge and experience, have any -- do you know

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1 whether or not the -- those registrations have  
 2 any information regarding retransmission royalty  
 3 entitlement to these particular --  
 4 A No.  
 5 MR. BOYDSTON: Objection Your Honor.  
 6 Leading.  
 7 MR. MacLEAN: And asked and answered.  
 8 JUDGE BARRETT: I will sustain.  
 9 BY MS. PLOWNICK:  
 10 Q So, would the same comments that you  
 11 made with regard to the DragonBall Z document  
 12 which I don't have that, TPG --  
 13 A I recall it. I recall it.  
 14 Q If you recall it?  
 15 A I recall it. I recall my comments,  
 16 yes.  
 17 Q Would those same comments apply to  
 18 those additional registrations?  
 19 A Yes. They would apply to any  
 20 situation in which the substantiation for  
 21 retransmission royalties was based solely on a  
 22 copyright certificate. They are not indicative

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1 of ownership or entitlement to claim  
 2 retransmission royalties.  
 3 Q In addition, with regard to Saban, I  
 4 think that was mentioned in one of the documents  
 5 that --  
 6 A Power Rangers, yes.  
 7 Q Yes. Do you have any knowledge  
 8 regarding Saban and it's relationship with Fox  
 9 Family or ABC Family?  
 10 A I have some knowledge that Fox and  
 11 Saban did business together and they are  
 12 connected. But I do not -- I cannot say more  
 13 specifically then that what it is.  
 14 Q But you have some knowledge that they  
 15 are connected?  
 16 A Yes.  
 17 Q All right. Okay. All right, so just  
 18 -- Ms. Saunders, for the last time, just to -- so  
 19 that we can try to get the record clear, so you  
 20 talked about with Mr. Boydston yet again, the  
 21 Excel spreadsheet and the genesis of the Excel  
 22 spreadsheet.

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1 A Yes.  
 2 Q Can you please just give us a  
 3 chronology explaining, just very briefly, how  
 4 the -- your -- so like written testimony was  
 5 filed in this case in May.  
 6 A Yes.  
 7 Q What documents were produced to IPG  
 8 that underlie that testimony?  
 9 A That underlied the May -- my May  
 10 testimony that was filed in my direct case -- or  
 11 our direct case of my testimony?  
 12 Q Yes.  
 13 A The hard copies of all the  
 14 certification reports upon which we relied in  
 15 making our claims, the claimants entitles of  
 16 which are enumerated or listed in --  
 17 respectively, with claimants in Exhibit A, titles  
 18 in Exhibit B to both of those testimonies.  
 19 Q And those were the documents -- were  
 20 those documents the documents that were relied on  
 21 in creating your catalysts that were attached to  
 22 your testimonies?

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1 A Yes. Yes.  
 2 Q And were those produced to IPG?  
 3 A Yes they were.  
 4 Q Do you know when they were produced to  
 5 IPG?  
 6 A I do not recall. I am so sorry.  
 7 Q Would June 2014?  
 8 A It was sometime, it would have been  
 9 after the filing of our direct case, yes.  
 10 Q Okay. And then later, subject to an  
 11 order of the Judges --  
 12 A Correct.  
 13 Q At that point in time, what happened?  
 14 A The Judges ordered us in late July as  
 15 I recall, to produce an electronic database that  
 16 contained the information about title -- that  
 17 contained the information of our certification  
 18 report information over our statement that we did  
 19 not have such an electronic database.  
 20 And I then instructed my counsel to  
 21 prepare an electronic database taking information  
 22 from the certification reports and putting it

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1 into the Excel file that we would create.  
 2 Q Was an effort made to be accurate in  
 3 the Excel spreadsheet?  
 4 A Absolutely. Absolutely. Very great  
 5 effort.  
 6 Q But was it possible to capture all  
 7 handwritten notes in the Excel spreadsheet?  
 8 A No, it was not possible. And I've  
 9 said that at least three times in this testimony.  
 10 That we could not put all the handwritten notes  
 11 into the electronic database. Or my lawyers  
 12 couldn't.  
 13 JUDGE BARRETT: So let me just this  
 14 time make sure we're clear. Did you request or  
 15 did your attorneys produce an electronic database  
 16 or a spreadsheet?  
 17 MR. SAUNDERS: A spreadsheet. I  
 18 apologize Your Honor. I made the mistake that  
 19 Mr. Boydston has made a few times. Confusing  
 20 data with databases.  
 21 BY MS. PLOVNIK:  
 22 Q In MPAA Exhibit 333 has the file name



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1 of the Excel spreadsheet that was produced. And  
2 So if you would like to -- would that refresh  
3 your memory?

4 A That would be -- yes. Isn't it -- I  
5 believe it's MPAA Owner Title 2000 to 2009.  
6 6308249.xls.

7 Q And it's an Excel spreadsheet?

8 A It's an Excel spreadsheet, yes.

9 JUDGE STRICKLER: If I may interject.  
10 I'm taking a look at the July 30 Order that we're  
11 talking about. And at the front, the final part  
12 that summarizes what is being ordered, on page 24  
13 of that July 30 Order, it says the Judges grant  
14 the IPG-MPAA Motion in part and Order MPAA to  
15 produce in electronic form any data that it  
16 maintains in electronic form that identifies for  
17 each year covered by this proceeding, the  
18 claimants it represents, the agents through who  
19 it represents those claimants, the program titles  
20 it represents and the claimants associated with  
21 those program titles.

22 MS. SAUNDERS: Yes.

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1 JUDGE STRICKLER: That particular  
2 Order, that's the portion of the Order that we're  
3 talking about now, correct?

4 MS. PLOVICK: Yes, Your Honor.

5 JUDGE STRICKLER: Okay. And so you --  
6 so MPAA was required to produce in electronic  
7 form any data that it maintains, not produce in a  
8 certain -- and as counsel would be aware, and  
9 your attorney as well, not create.

10 MS. SAUNDERS: Yes, I understand.

11 JUDGE STRICKLER: This is my  
12 understanding that despite the fact that you did  
13 not indeed maintain anything in that type of  
14 form, electronic spreadsheet form, that you  
15 created one.

16 MS. SAUNDERS: Yes.

17 JUDGE STRICKLER: In an attempt to  
18 provide --

19 MS. SAUNDERS: To comply with the  
20 Order and to facilitate IPG's review of the pages  
21 of certifications. Your Honor, I think that the  
22 responsibility for this unfortunately lies with

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1 me.

2 I am a lawyer. I understand the  
3 difference between creation versus what you have  
4 in your possession when you're ordered to compel.

5 However, and I had a fairly animated  
6 conversation I believe with Mr. Lanard about this  
7 order in which I urged him not to appeal that  
8 order, but to try to comply with it to the best  
9 of our abilities by creating this document.  
10 Because I wanted to demonstrate our good faith in  
11 producing in discovery, information that was  
12 sought by IPG.

13 JUDGE BARRETT: Okay, but your  
14 reference is in the record to the Judges'  
15 Ordering the creation of this electronic  
16 spreadsheet is shorthand.

17 MS. SAUNDERS: I'm speaking too  
18 loosely, Your Honor, and I apologize.

19 JUDGE BARRETT: Thank you.

20 MR. BOYDSTON: Your Honor, for the  
21 record, I renew my objection to Exhibits 336  
22 through 337 and 339 to 347 based upon the

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1 testimony that we just heard now.

2 JUDGE BARRETT: I'm sorry, do you --

3 JUDGE STRICKLER: What's the legal  
4 basis?

5 JUDGE BARRETT: Yes, what's the legal  
6 basis of that? I'm sorry?

7 MR. BOYDSTON: The legal basis of that  
8 is that it's become clear that they did not  
9 produce all electronic records in their  
10 possession as Judge Strickler read from the  
11 Order. Instead they read -- they produced a  
12 document they created therefrom. And on that  
13 basis, I just want to make the objection.

14 JUDGE BARRETT: Overruled. That is  
15 not the -- that is not the state of the facts.  
16 Go ahead.

17 MS. PLOVICK: Okay, Ms. Saunders, I  
18 have -- I don't have any further redirect  
19 questions right now. I don't know if the Judges  
20 have any questions for Ms. Saunders.

21 MR. BOYDSTON: Your Honor, I have just  
22 two -- well, three questions and I will keep it

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1 at three.  
 2 JUDGE BARRETT: Okay.  
 3 RE-CROSS EXAMINATION  
 4 MR. BOYDSTON: First of all with  
 5 regard to the database that we've been  
 6 discussing, in response to earlier questions, --  
 7 JUDGE BARRETT: Let's not -- let's are  
 8 we -- go ahead Mr. Boydston. The database that  
 9 is really a spreadsheet that we've been  
 10 discussing?  
 11 MR. BOYDSTON: Your Honor, I'm sorry,  
 12 I'll call it Henry if it makes people happy.  
 13 The spreadsheet that was prepared in  
 14 response to the July 30 Order. Previously you  
 15 said your knowledge about how it was prepared was  
 16 limited. In response to a question by Ms.  
 17 Plovnick, you mentioned handwritten notes and the  
 18 difficulty of dealing with handwritten notes.  
 19 What handwritten notes are you  
 20 referring to?  
 21 MS. SAUNDERS: The lining -- lining  
 22 out -- the lining out. We can't indicate what

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1 titles were offered and that the claimants  
 2 rejected.  
 3 BY MR. BOYDSTON:  
 4 Q In other -- when you say lining out,  
 5 lining out the --  
 6 A The title.  
 7 Q The title on the certifications?  
 8 A Yes. Yes. On the reports that are  
 9 attached to the certification form, yes.  
 10 Q Right. But your testimony is that  
 11 there may have been difficulty in faithfully  
 12 reproducing that in the spreadsheet?  
 13 A Well, we would not -- I don't --  
 14 Q Or accurately doing it?  
 15 A Well we -- we -- I supposed we could  
 16 have encoded titles and then shown that they were  
 17 lined out. We did not do that.  
 18 Q I see.  
 19 A But you had the certification forms  
 20 themselves.  
 21 Q With regard to questions about  
 22 mistakes happening, and you said they happen

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1 sometimes, which is really understandable. How  
 2 many times has the MPAA asked one of its  
 3 claimants to return money based upon a mistake?  
 4 A I do not recall. But more than once.  
 5 Q Did the MPAA ask -- has the MPAA ever  
 6 asked Litton Syndication, Inc. to return money?  
 7 A I do not know the answer to that Mr.  
 8 Boydston.  
 9 MR. BOYDSTON: Thank you.  
 10 REDIRECT EXAMINATION  
 11 MS. PLOVNIK: I have one more  
 12 question. Ms. Saunders, were -- and I can -- let  
 13 me go over here to.  
 14 JUDGE BARRETT: That's okay.  
 15 MS. PLOVNIK: And now we're near the  
 16 mic.  
 17 You testified that there was an effort  
 18 to -- for the Excel spreadsheet to be accurate.  
 19 That included capturing the information that  
 20 might not have been in the form of a strikeout,  
 21 but it included an effort to capture that  
 22 information in the spreadsheet, isn't that right?

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1 MS. SAUNDERS: Yes.  
 2 MS. PLOVNIK: So it should -- it was  
 3 inevitable -- so I just wanted -- so your testimony  
 4 hasn't changed in any way from when I asked you  
 5 the question?  
 6 MS. SAUNDERS: No. I'm trying to say  
 7 the same thing throughout.  
 8 MS. PLOVNIK: Okay. Thank you. And  
 9 I have no further questions.  
 10 JUDGE BARRETT: May this witness be  
 11 excused?  
 12 MR. BOYDSTON: Yes, Your Honor.  
 13 MR. MacLEAN: Yes, Your Honor.  
 14 JUDGE BARRETT: Thank you Ms.  
 15 Saunders. And safe travels.  
 16 MS. SAUNDERS: Thank you.  
 17 JUDGE BARRETT: We're at recess until  
 18 1:30. We earned three extra minutes.  
 19 MR. MacLEAN: Your Honor, may I  
 20 inquire as to a time estimate for our afternoon  
 21 session?  
 22 JUDGE BARRETT: By an estimate you



## Certificate of Service

I hereby certify that on Thursday, April 05, 2018 I provided a true and correct copy of the Designated Prior Testimony of Jane V. Saunders, Oral Testimony in Consolidated Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II), Transcript pp. 6-192 (December 11, 2014). to the following:

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Signed: /s/ Lucy H Plovnick